

EXHIBIT H

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
WOODBRIIDGE GROUP OF COMPANIES, . Case No. 17-12560 (KJC)
LLC, *et al.*, .
 .
 .
 . Courtroom No. 5
 . 824 Market Street
 . Wilmington, Delaware 19801
 .
 . Wednesday, October 24, 2018
Debtors. . 10:00 A.M.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 10:01 a.m.)

2 (Call to order of the Court)

3 THE COURT: Good morning, all.

4 (A Chorus of "Good Morning, Your Honor")

5 MR. MORTON: For the record, Edmon Morton from
6 Young Conaway Stargatt & Taylor on behalf of the debtors.

7 As we get underway, Your Honor, obviously, the
8 main event today is confirmation and we wanted to highlight
9 in addition to my colleagues from Klee Tuchin and Young
10 Conaway, we also have in the courtroom with us today the four
11 declarants that have submitted declarations.

12 We'll introduce those at the appropriate time, but
13 just so that Your Honor is familiar, we have Emily Young from
14 Epiq who submitted the voting declaration; Soneet Kapila who
15 is the SEC's expert that submitted evidence at both hearing
16 the trustee trial and then also in support of confirmation;
17 Bradley Sharp who is the company's CRO and also Fred Chin who
18 is the company's CEO.

19 If I may, turning to the amended agenda that we
20 filed yesterday, Your Honor, thankfully, to the work of your
21 staff, we can flip straight through to item 23. Everything
22 else has either been consensually adjourned or disposed of by
23 the court.

24 Item 23, Your Honor, the only two outstanding
25 matters. Ultimately, Your Honor did enter the order on the

1 committee's professionals. However, items (k) and (l) from
2 the exhibit, attached to the agenda, were the quarterly
3 applications of Conway & MacKenzie and also Dundon.

4 A CNO was filed just this morning. Counsel gave
5 me orders to hand up, if Your Honor is prepared to entertain
6 them, if you need to simply review the CNO and those
7 applications later, that's acceptable as well.

8 THE COURT: I'll take the orders, but will address
9 it after the hearing.

10 MR. MORTON: Thank you, Your Honor. If I may
11 approach?

12 THE COURT: You may. Thank you.

13 MR. MORTON: Your Honor, the next item on the
14 agenda, Your Honor has entered an order. Since it was
15 submitted, that is the final fee application of Gibson Dunn &
16 Crutcher who were initially counsel to the debtors.

17 The next item on the agenda was listed as
18 uncontested going forward. It's item number 25. And that is
19 the motion to file Mr. Chin's declaration in a redacted form.

20 As Your Honor no doubt is aware from having
21 reviewed both the motion and the declaration in support of
22 this hearing, the declaration itself sets forth an aggregate
23 estimated value for the debtors' real property holdings at
24 \$620 million dollars.

25 The schedule provides the support for that number.

1 And, obviously, since the primary activity of the debtors
2 going forward is going to market and sell those properties,
3 we believe that's commercially sensitive information.

4 It was not the subject of an objection until about
5 fifteen minutes ago when Mr. Sarachek's group of dissenting
6 creditors, I believe, he denotes them filed an objection. It
7 was well past the deadline that Your Honor set, pursuant to
8 the motion to shorten. And we haven't had a chance even
9 converse with Mr. Sarachek about it.

10 So, certainly, our view, initially, would be that
11 the objection simply be overruled as untimely, you know,
12 given where we are in the hearing.

13 We will, of course, present arguments on the
14 merits if Your Honor chooses to hear it, but our initial
15 inclination would be that he did not comply with the order
16 and it should be disallowed.

17 THE COURT: But I thought because it was set on
18 shortened notice that the time to object was now?

19 MR. MORTON: Your Honor's order set yesterday as
20 10:00 a.m. as the time. And to give Your Honor credit for
21 having done so, this is, obviously, a very sensitive matter.
22 It would have taken time for us to have evaluated and tried
23 to respond.

24 To put it bluntly, we simply don't believe he's
25 entitled to the information. It hasn't been -- his objection

1 doesn't raise valuation. It raises allocation of valuation
2 relative to his view of the different types of claims that
3 his clients hold. But it doesn't raise valuation as a whole.
4 And we believe that it would be inappropriate to see the
5 exhibit and we certainly have concerns, in particular, with
6 him seeing the exhibit.

7 THE COURT: I'll hear from the objectors.

8 MR. MORTON: Thank you, Your Honor.

9 MR. SARACHEK: Good morning, Your Honor, Joe
10 Saracheck for the dissenting creditors.

11 THE COURT: Good morning. Would you first address
12 the timeliness of the objection?

13 MR. SARACHEK: Sure.

14 Your Honor, we thought that the timeliness was --
15 well, we thought we had until ten o'clock this morning,
16 unless I'm mistaken, and we were looking for the order. We
17 thought it was ten o'clock this morning at the hearing given
18 the shortened --

19 MR. MORTON: Your Honor, if I may; my apologies.

20 I did misread the date, so I apologize on this.

21 THE COURT: All right, thank you.

22 MR. SARACHEK: Your Honor, again, we're prepared -
23 - a lot of paperwork has been filed since Friday. We're
24 prepared to enter into confidentiality, but we do think it's
25 very relevant particularly since we have an appeal on

1 Owlwood, which is a significant property. And it does go to
2 the -- you know, to one of our bases for objection, which is
3 that there should be a reserve set aside or some mechanism
4 that, in the event, you know, it's determined that our
5 clients are secured, and we do believe that that property, in
6 particular, is significant that there's a mechanism set aside
7 to pay our clients.

8 THE COURT: Well then, certainly, you must have
9 your own view of what that property is worth?

10 MR. SARACHEK: I do. I think it's relevant to
11 see, you know, especially since it's such a significant
12 amount of the six hundred some odd million dollars. I think
13 it is relevant to see what Mr. Chin has in there and we'd ask
14 the court let us see it under, you know -- we're prepared to
15 sign confidentiality or tell the court that we'll maintain
16 confidentiality, but it is relevant and that's our position.

17 THE COURT: All right, does anyone else wish to be
18 heard?

19 MR. TUCHIN: Good morning, it's a pleasure to be
20 back in Your Honor's court.

21 Michael Tuchin of Klee Tuchin Bogdanoff & Stern.

22 Your Honor, this is the single most confidential
23 document being filed in this case or these cases. Were this
24 document to leak, it would give every buyer or potential
25 buyer of the debtors' properties the opportunity to know the

1 debtors' internal valuation. And I think we could be assured
2 that the prices would, therefore, be adjusted accordingly.

3 As a result, we are extremely reluctant to share
4 this information with anyone who does not have an absolute
5 need to know. And Mr. Sarachek has not demonstrated, in any
6 way, an absolute need to know.

7 Should this court at the end of the hearing order
8 that an escrow be necessary under the plan, then, I suppose,
9 we could address it at that time. But it seems to us, at
10 this time, having taken no discovery, having no evidence of
11 his own to establish value, having declined the court's
12 invitation extended months ago to take discovery if he felt
13 he needed it, to show up today and say that he needs to know
14 the values of the properties for undisclosed reasons does not
15 justify sharing the most confidential information with him at
16 this time.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 Anyone else wish to be heard?

20 MR. PACHULSKI: Just a moment, Your Honor.

21 Thank you, Your Honor.

22 Richard Pachulski of Pachulski Stang Ziehl & Jones
23 on behalf of the official creditors committee.

24 I echo what Mr. Tuchin said about the sensitivity
25 of the document, Your Honor. And, in fact, while I've agreed

1 with Mr. Saracheck that we are not at all raising the pro hac
2 today that it's going to be at an omnibus hearing, if I had
3 any idea that this would be an issue, the committee would
4 have instructed me to go forward today with it.

5 But we are where we are. But I do need to explain
6 and, again, reaffirm what Mr. Tuchin said this is basically
7 telling buyers what they should probably bid for a piece of
8 property.

9 Now, factually, Owlwood is a good example. If Mr.
10 Saracheck wants an idea of what these properties are worth,
11 most of them have been put up for sale. Owlwood has been
12 listed, from my understanding, for a \$115 million dollars.
13 That's a matter of public record.

14 Now, I still am struggling to understand why Mr.
15 Saracheck wants to see this because here's the reality.

16 Let's assume Owlwood sells and let's assume there
17 has to be a reserve. Then, we would all come back and say
18 this is what Owlwood sold for. We don't have the money to
19 reserve right now, and I think it's based on a security
20 interest, so, again, we're not going to put money aside from
21 Stradella for Owlwood even if -- and we'll argue that it's
22 not the case, that the money has to be set aside.

23 So, other than Mr. Saracheck's curiosity, there's
24 no basis of anything that he's raised in his objection to
25 plan confirmation that would require the necessity of his

1 seeing those numbers. It's not that case. We're not doing a
2 traditional reorganization where some of the properties will
3 sell to fund an ongoing basis.

4 They're going to be sold and distributed to
5 creditors including Mr. Sarachek's clients. So, I'm
6 somewhat, to be honest, perplexed as to what he's really
7 trying to achieve in this case when most of these he can
8 either figure out, talk to a broker, or actually look at the
9 listings that have taken place today.

10 THE COURT: Thank you.

11 MR. PACHULSKI: Thank you, Your Honor.

12 MR. SABIN: Good morning, Your Honor. Jeff Sabin
13 on behalf of the unitholders committee.

14 I echo and concur with the statements made by Mr.
15 Tuchin and Mr. Pachulski. And, for the record, I would ask
16 you to take judicial notice of the listing that was actually
17 in last Friday's Wall Street Journal, a picture of the
18 property, a \$115 million dollars listing price.

19 And if all that he wants is to understand what the
20 debtors' view is right now in the process of seeking to
21 market the property, best evidence you can take judicial
22 notice of.

23 Number two, I would reserve comments about any
24 reserve at all since, as I understand it, the plan, if it is
25 confirmed, would, number one, eliminate any liens that he,

1 otherwise, is asserting, directly or indirectly.

2 And, number two, to my knowledge, there is, while
3 there is an appeal pending, there is no stay pending appeal
4 of your decision on the motion to dismiss his adversary
5 proceeding.

6 Thank you, Your Honor.

7 THE COURT: Thank you.

8 Does anyone else wish to be heard?

9 Mr. Saracheck, I'll give you the last word, if you
10 like it?

11 MR. SARACHEK: Thank you, Your Honor. I'm fine.

12 THE COURT: All right.

13 I'm going to grant the request for relief with
14 respect to filing under seal and overrule the objection.
15 Frankly, two major reasons for it is, one, the dissenting
16 creditors could have either conducted discovery in connection
17 with confirmation and, of course, it's apparently undisputed.
18 I missed it myself but the property was listed for sale at a
19 \$115 million dollars in the Wall Street Journal. And,
20 secondly, I think that it's apparent that it would not work
21 in the debtors' favor but would probably be harmful to the
22 debtor and the creditor body were the prices of the various
23 properties that are contained as attachments to the Chin
24 declaration would be disclosed.

25 So, I will grant that relief. Do you have a form

1 of order for me?

2 MR. MORTON: I do, Your Honor. May I approach?

3 THE COURT: Yes. Thank you.

4 That order has been signed.

5 MR. MORTON: Thank you, Your Honor.

6 Skipping briefly to the end of the agenda, for a
7 moment. As Mr. Pachulski just noted, item 28 has been
8 adjourned to the November 20 hearing and won't be undertaken
9 today. That's the motion dealing with Mr. Saracheck's *pro hac*
10 *vice* admission.

11 That leaves us with items 27 and 26, Your Honor.
12 Item 27 is the plan settlement motion that we filed. You'll
13 note that we filed a certificate of no objection, but did not
14 submit a proposed form of order with it. And that was on
15 purpose, Your Honor. It was always intended that the plan
16 settlement motion would be approved as part of and in the
17 confirmation order itself, and that's how it's been treated.

18 THE COURT: So that any record that would be made
19 today would be made jointly in connection with confirmation
20 and that motion?

21 MR. MORTON: That is the intent, Your Honor.

22 We should point out that, you know, several days
23 after the objection deadline, a reservation of rights was
24 filed by Mr. Saracheck --

25 THE COURT: I read it.

1 MR. MORTON: -- and, so from our perspective,
2 we'll deal with his objection at confirmation and we believe
3 that that's also untimely and also wasn't necessary in
4 opposition to the motion in any event.

5 THE COURT: I understand.

6 MR. MORTON: With that, Your Honor, I would cede
7 the podium to Mr. Tuchin to walk us through confirmation.

8 THE COURT: All right, thank you.

9 MR. TUCHIN: Thank you, Your Honor.

10 It's a pleasure to be here today seeking
11 confirmation of a plan in these very significant cases. I
12 cannot think of a case of this magnitude and size where we've
13 had such active creditor participation and support of the
14 plan.

15 As you've seen from the ballot's summary, these
16 plans or this plan for these debtors was overwhelmingly
17 approved in these cases. And I would note that of the
18 thousand of creditors, we had approximately 85 percent
19 participation in the plan by noteholders and unitholders,
20 which, in my experience, is simply remarkable.

21 As the court probably recalls, in late January
22 following extensive heated litigation, the court entered an
23 order which set the cases on a different course. A new board
24 was appointed and two additional committees were added to the
25 general unsecured creditors committee: the official

1 noteholders committee and the official unitholders committee;
2 each fiduciaries representing the interest of the underlying
3 holders.

4 The board met and the board retained Mr. Chin, who
5 is in court, as the debtors' CEO, and Mr. Sharp, who is also
6 in court, as the debtors' CRO.

7 We were welcomed to the case by all involved. Mr.
8 Sabin, on behalf of the unitholders, immediately flew out to
9 Los Angeles with Ms. Edmonson (ph), another of their
10 colleague, to brief us on the cases, Mr. Klee and me. We met
11 with Mr. Pachulski, similarly; Mr. Kortanek briefed us by
12 telephone; and we spoke frequently with the SEC as well, as
13 we endeavored to get up to speed on these cases, which was
14 more of a drinking from a firehose than I ever experienced in
15 my career and I think Mr. Klee would say the same.

16 Obviously, there was a massive history already in
17 the cases and a lot going on in the cases.

18 While we were seeking to get up to speed on the
19 legal issues involved, Mr. Chin began work on understanding
20 the properties and working to develop a business plan, which
21 we knew early on was going to be a cornerstone of any
22 consensual resolution of these cases, without an
23 understanding of the properties and what they could yield,
24 and the path to maximizing value, it wasn't going to be
25 possible to resolve the many legal issues.

1 And Mr. Sharp, at the same time, and his team
2 began working on a forensic analysis to understand where the
3 money went, how it flowed, whether the business records
4 reflected reality or not. They were aided initially by Mr.
5 Kapila report and Mr. Kapila is generously in court today as
6 well. But they needed to do their own due diligence,
7 obviously.

8 And as Mr. Kapila has indicated and his colleague
9 indicated in testimony before the court in this case, they
10 were hamstrung in their efforts by the lack of cooperation
11 and information. The debtors, obviously, had much greater
12 access to information for a greater period of time.

13 And so, Mr. Sharp and his team, while they had a
14 good start from Mr. Kapila's report, started from scratch and
15 looked at all the business records themselves, did their own
16 forensic analysis with experts in the area, again, to
17 determine another critical component to cutting the deal.
18 Was this a Ponzi scheme? Were you able to unscramble the
19 eggs or was substantive consolidation going to be necessary?

20 Through our meetings with the various
21 professionals and weekly calls with financial advisors, the
22 business people, and the attorneys, it became clear to us
23 that there were many complicated and interesting issues in
24 these cases. Some of which, candidly, we thought could end
25 up in the Supreme Court.

1 There were either splits in the circuit or
2 untested fascinating areas of law, some of which are the
3 subject of the sole remaining objection to confirmation, some
4 of which are not covered by the objection. But, as I recall,
5 there were about 20, 25 issues that we identified as a result
6 of the initial meetings which could have resulted in years of
7 litigation and tens of millions of dollars of costs.

8 It was also clear to us, and to the other
9 professionals, that there was quite a bit of dissention in
10 the case following what had been extensive litigation. And
11 without a change in approach, these cases were headed towards
12 years of litigation.

13 We convened all of the attorneys at Klee Tuchin
14 Bogdanoff & Stern to go through the issues and to start
15 framing what the issues were. We were joined by Young
16 Conaway and counsel for all three committees. And, in
17 advance, we heard from the SEC through a number of calls and
18 Mr. Baddley, in particular, who's been extraordinary
19 constructive in these cases.

20 The tone we set was that we needed to remember
21 that this was an unusual case with thousands of victims and
22 that one thing was clear. Every dollar spent on professional
23 fees in the cases was a dollar that would not be available to
24 the victims in these cases.

25 And I would note, and I'm appreciative that we do

1 have a number of the investors in court today and I'm sure
2 their counsel will introduce them at the appropriate time.
3 But they're to be applauded for playing such an active role
4 in these cases.

5 As a result of the view that we had reached and
6 our board's mandate to get these cases resolved as quickly as
7 possible and as economically as possible, not only to reduce
8 the burn, which came directly out of the investors' pockets,
9 but to return money to the investors as quickly as possible.
10 Another very important thing in these cases given that a
11 number of these investors invested significant portions of
12 their life savings and needed not just money but money sooner
13 rather than late.

14 We charged everyone in the case with coming to an
15 amicable resolution.

16 THE COURT: Let me ask you to pause for a moment
17 as a matter of curiosity.

18 MR. TUCHIN: Of course.

19 THE COURT: How many took advantage of the
20 financing program which I approved?

21 MR. TUCHIN: The financing program did not end up
22 going forward, Your Honor, as I'll let either committee
23 counsel or noteholder counsel describe.

24 THE COURT: Thank you.

25 MR. TUCHIN: And by all means, obviously, it's

1 your courtroom. Feel free to interrupt at any time.

2 THE COURT: Why I thank you.

3 (Laughter)

4 MR. TUCHIN: So, Your Honor, I would indicate
5 that, you know, Gibson Dunn & Crutcher, Young Conaway and all
6 of the other parties I mentioned, Mr. Baddley, Mr. Kortanek,
7 Mr. Pachulski, Mr. Sabin all played an extraordinarily
8 helpful role in allowing us to transition into these cases.
9 And all of them demonstrated, candidly notwithstanding, you
10 know, the personal gain that would have accompanied a multi-
11 year case with lots of litigation, they all committed to
12 trying to get these cases resolved quickly, economically so
13 that the most amount of money possible could be returned to
14 the victims.

15 And everyone understood and has appreciated
16 throughout these cases that they are unusual, that we do have
17 victims here, and that we need to try to return as much money
18 as quickly as possible to them.

19 Following our initial retention in the case, we
20 received white papers, which we encouraged, from the
21 committees which set forth their briefing on a number of
22 issues of interest in the case.

23 I mentioned that we sat down in my offices, just
24 attorneys, and went through the issues. It was like a law
25 school exam day. Literally, we got out cases. We read

1 through cases, as people tried to make their points about
2 various cases. You'll hear about, you know, some of those
3 issues as we address the sole objection that remains.

4 But it was clear, again, that there were not
5 winners and losers. There was lots of nuance, lots of
6 issues that could have gone either way in trying to resolve
7 some of these issues.

8 In particular, I think of the treatment of the
9 units which was an area where we did get out cases and look
10 through to see if there was any binding precedent in terms of
11 how you would treat different investors in a Ponzi scheme.
12 And lots of great arguments but, ultimately, I think the
13 parties would agree the Supreme Court would have to resolve
14 whether you have a situation in a Ponzi scheme where everyone
15 is treated equally or whether a unit, if it's truly an equity
16 interest, would be treated on a junior basis.

17 I don't know the answer. And, candidly, the
18 debtors didn't try to reach answers to a lot of these issues
19 because the case law was uncertain and we viewed our role as
20 a mediator trying to bring the parties together, ably
21 represented to try to reach a resolution.

22 We then had the advisors, the financial advisors,
23 meet for a full day at our offices. And then we had two days
24 of meetings, at which the business people, the financial
25 advisors, and the lawyers for the three committees and the

1 debtors were present in our offices.

2 These were highly contentious meetings, much like
3 in mediation. We had everyone together. We broke people
4 apart. We went room to room trying to compromise. And
5 following two days of very intense good faith negotiations,
6 we reached agreement on the term sheet for a plan which we
7 promptly filed with the court.

8 And, again, there are three main components to
9 reaching that agreement. One was the work that Mr. Sharp did
10 to be able to present the committees with information
11 regarding what accounting and forensic analysis was
12 available. And, number two, Mr. Chin's draft business plan
13 which presented alternatives for maximizing the value of the
14 assets. And then a whole host of legal issues that had to be
15 resolved, one way or another in order, to avoid significant
16 litigation.

17 And those were all built into the term sheet
18 which, ultimately, formed the basis of the plan and the
19 disclosure statement.

20 We then worked with the three committees and the
21 SEC to prepare a plan or reorganization or plan of
22 liquidation and the disclosure statement which were, as you
23 know, filed with the court. And this court approved the
24 disclosure statement.

25 Following the solicitation efforts commencing, we

1 received a number of inquiries as did the three committees
2 from investors who were confused about what we were trying to
3 accomplish in these cases. And, in part, that confusion
4 arose because of unauthorized communications from a number of
5 different people to the holders recommending certain courses
6 of action, one versus the other.

7 And, again, by some people who were not before,
8 had never, to my knowledge, been before the court;
9 nonetheless, recommending that they do certain things or not
10 do certain things which, I think, had the effect of confusing
11 a number of holders.

12 And so, we held, in concert with the three
13 committees, five conference calls available for all investors
14 in the company. We did two call dedicated to unitholders,
15 three calls dedicated to noteholders, and all of the
16 professionals, again, all of the attorneys and Mr. Sharp
17 participated in those calls.

18 And we explained to people the process that we had
19 gone through to reach the agreement, why we thought the
20 agreement was appropriate, and what they were being asked to
21 do. Almost entirely information that was in the disclosure
22 statement, but understandably most people are not able to
23 make their way through a lengthy disclosure statement and
24 understand all of the nuances, and there was confusion, as I
25 indicated, when they were being approached by other people.

1 We had unbelievable participation, by our count;
2 over a third of the investors participated in these phone
3 calls. And we received, as did the committees, very, very
4 positive feedback following the calls for having had these
5 calls.

6 And we believe that they resulted in the
7 overwhelming support that we received for the plan. As I
8 indicated, approximately 85 percent of investors voted on the
9 plan which is a huge number in cases like this. And of those
10 who voted, as the court saw, 95 percent approximately of the
11 noteholders and unitholders voted in favor of the plan and 97
12 percent, all but one creditor holding general unsecured
13 claims, voted in favor of the plan.

14 The objections to the plan were three. Two of
15 them had been resolved. The objection by Contrarian and the
16 objection by the IRS. Both have confirmed that the changes
17 made to the confirmation order addressed their objections.

18 We also had three objections regarding cure
19 claims. With respect to the assignment of contracts, all of
20 those have been addressed as well. I noticed one formally
21 withdrew the objection on the docket yesterday. But all
22 three have been resolved.

23 That leaves us, as we sit here today, with only
24 one objection to confirmation. That being from Mr.
25 Sarachek's group. In addition, the U.S. Trustee had raised

1 an informal concern that we not seek to avoid our burden of
2 proof in confirming the plan.

3 I believe their concern, although they can
4 certainly address it better than I can, was that we not seek
5 to use a lower burden of proof for approving a settlement in
6 order to get around the burdens of proof that may be required
7 to confirm a plan.

8 And, certainly, we are in agreement with them.
9 We're not seeking to get around any burdens of proof in our
10 confirmation order to confirm a plan. And so, I think we'll
11 be able to address their concern, if we haven't already, by
12 virtue of the evidence that's been provided, the separate
13 motion to settle that was filed, and the form of the
14 confirmation order.

15 And in terms of Mr. Sarachek's objections, we did
16 reach out to him over the weekend to see if our pleadings,
17 our ballot summary and the other evidence had reduced the
18 issues. He was not willing to respond substantively, so
19 we'll have to find out what is still being pressed.

20 But, broadly speaking, he objects to the Ponzi
21 scheme determination. He erroneously claims that there has
22 been no evidence in the record of a Ponzi scheme when, in
23 fact, in the very early stages, Mr. Kapila's colleague
24 testified and Mr. Kapila's report was admitted into the
25 record, which I think very clearly lays the groundwork for

1 this being a Ponzi scheme.

2 He claims that notwithstanding this court's order
3 dismissing the complaint with prejudice, to the extent that
4 his clients are determined to be secured creditors on appeal,
5 there are no funds reserved to pay him. We will address all
6 of these arguments.

7 He challenges substantive consolidation. He
8 challenges the elimination of intercompany liens and claims
9 saying that a plan cannot settle such issues, which we
10 believe, obviously, is incorrect. He challenges certain of
11 the voting determinations, although, in fairness, he had not
12 yet seen the ballot report, so I do not know if those remain.
13 And he challenges the treatment of the units versus the
14 notes, if substantive consolidation is approved.

15 I believe he conflates certain issues, Ponzi,
16 substantive consolidation, the lien issues. But I think it
17 probably makes the most sense to hear from him first as to
18 what he is pressing and then the debtors can respond.

19 At this time, again, it's your courtroom and we'll
20 defer to you, but, at this time, we think it makes sense to
21 admit the declarations of our declarants: Mr. Chin, Mr.
22 Sharp, Ms. Young, and Mr. Kapila. They are all in court and
23 available for cross-examination, should anyone wish to cross-
24 examine them.

25 And then we would submit that after examination,

1 we can give Mr. Sarachek the opportunity to argue what he
2 wishes to argue and then the debtors and the committees can
3 respond and put on an affirmative case, if the court wishes.

4 THE COURT: Okay. Let me just first ask, Mr.
5 Sarachek, whether any grounds for objection are no longer
6 being pressed or whether you're still pressing them all?

7 MR. SARACHEK: We're still pressing our objection
8 and with respect to Mr. Tuchin's statement, I don't have any
9 record of being contacted by the debtors in an effort to
10 resolve our objection.

11 I did -- our objection -- I'm sorry. Thank you,
12 Your Honor.

13 Our objection, as you know, had to be filed before
14 the declarations were filed on Friday. We've been doing an
15 enormous amount of reading and research. We would like to
16 hear from a couple of the declarants, specifically Mr. Sharp
17 and Mr. Kapila on the Ponzi scheme issue.

18 And as far as our objection that basically the
19 requirements are that each debtor -- that with respect to
20 voting and each debtor, the tabulation, it was unclear from
21 what was filed whether the debtors, in fact, did that.
22 Looked at every specific debtor and it was unclear to us.
23 So, with respect to that declaration, if Mr. Tuchin can clear
24 that up, perhaps, we don't press forward on that specific
25 element of our objection.

1 THE COURT: All right, thank you.

2 MR. TUCHIN: Your Honor, on October 21st, I wrote
3 to Mr. Saracheck and his colleague,

4 "Dear Joe & Jonathan,

5 I hope all is well. In order to streamline the
6 confirmation hearing as much as possible, in
7 effort to reduce costs, it would be helpful to
8 know which objections you intend to pursue and
9 whether you intend to cross-examine any of our
10 witnesses. We're hoping that the declarations,
11 including especially the balloting declaration,
12 will narrow the issues somewhat."

13 Mr. Saracheck responded,

14 "Michael,

15 Richard and Catherine are copied here. We need to
16 discuss with them, given the pending motion to
17 disqualify, we will get back to you tomorrow."

18 I will represent to the court that they never got
19 back to me.

20 Thank you, Your Honor.

21 THE COURT: All right. So, let's go down the list
22 of declarations that have been offered for admission.

23 First is the Sharp declaration at docket number
24 2829, which includes the Kapila report along with it.

25 Is there any objection to the admission of that

1 declaration?

2 (No verbal response)

3 THE COURT: I hear none. It's admitted without
4 objection.

5 (Declaration of Bradley Sharp admitted in evidence)

6 THE COURT: The Chin declaration -- well, I guess,
7 you had offered the redacted declaration which is at docket
8 number 2833. Does anyone have any objection to that --
9 admission of that declaration?

10 (No verbal response)

11 THE COURT: I hear none. It's admitted without
12 objection.

13 (Declaration of Frederick Chin admitted into evidence)

14 THE COURT: Next is another Kapila declaration
15 which is at docket 2834 which confirms, he says basically
16 what I said I stand by.

17 Anyone have an objection to the admission of that
18 declaration?

19 (No verbal response)

20 THE COURT: I hear none. It's admitted without
21 objection.

22 (Declaration of Soneet Kapila admitted in evidence)

23 THE COURT: Now, there are two Young declarations;
24 one is at docket 2836 and one at 2855. The second one
25 corrects the tabulation with respect to voting in classes

1 three and five.

2 Does anyone have any objection to the admission of
3 those two declarations?

4 MR. SARACHEK: Your Honor, is it possible to ask
5 Ms. Young whether, in fact, the tabulation was done?

6 THE COURT: You'll have the opportunity to cross-
7 examine, if you like.

8 MR. SARACHEK: Okay. That's the only question.

9 And, by the way, let me apologize to Mr. Tuchin.
10 I thought he said he called me. I misheard but, yes, in
11 fact, he did send me that email. As you know, there was this
12 --

13 THE COURT: I understand.

14 MR. SARACHEK: -- other situation that the
15 committee brought upon us that we were dealing with.

16 THE COURT: Okay.

17 MR. SARACHEK: So, I apologize to Mr. Tuchin.
18 Yes, you did send us that email.

19 THE COURT: Is there any objection to the
20 admission of the two Young declarations?

21 MR. SARACHEK: Can we -- can I ask her
22 specifically -- can I cross-examine her or not?

23 THE COURT: You can cross-examine her.

24 MR. SARACHEK: Okay.

25 THE COURT: But I'll admit them, subject to your

1 cross-examination.

2 MR. SARACHEK: Okay. Thank you, Your Honor.

3 THE COURT: All right.

4 MR. TUCHIN: Thank you, Your Honor. My suggestion
5 would be that we allow Mr. Saracheck to cross-examine the
6 witnesses he wishes to cross-examine. We reserve our right
7 to redirect. We'll rely on their testimony in chief and only
8 reserve the right to redirect should it be necessary.

9 THE COURT: Certainly.

10 Mr. Saracheck, who would you like to cross-examine,
11 beside Ms. Young, if anyone?

12 MR. SARACHEK: Yeah, so I would like to cross-
13 examine Mr. Kapila. I'd like to ask him a couple of
14 questions.

15 THE COURT: All right.

16 MR. SARACHEK: With respect to the Ponzi scheme
17 issue.

18 THE COURT: Very well. Mr. Kapila, will you come
19 forward and be sworn in, please?

20 SONEET KAPILA, DEBTORS WITNESS, SWORN

21 THE CLERK: Please be seated. State your full
22 name for the record and spell your last name.

23 THE WITNESS: My name is Soneet Kapila; K-A-P-I-L-
24 A.

25 CROSS EXAMINATION

1 BY MR. SARACHEK:

2 Q Good morning, Mr. Kapila.

3 A Good morning.

4 Q How are you?

5 With respect to your declaration, in particular, the
6 report that you did in relation to the SEC complaint, can you
7 -- first of all, did you do any work for this bankruptcy
8 estate?

9 A I have not done any work for the bankruptcy estate.

10 Q Okay. So, other than speaking with Mr. Sharp and
11 representatives, you're not a retained professional in the
12 bankruptcy estate nor have you done any professional work on
13 behalf of the estate?

14 A I have not rendered any services, professional services
15 to this bankruptcy estate. I think my office and I, from my
16 recollection, one call in which I sat in with Mr. Sharp. I
17 can't remember if Mr. Sharp was on that call or not, just to
18 facilitate some transitional information.

19 Q So, how did it come to pass that you on October 18th
20 submitted this declaration, you know, in support of the
21 debtors' premise that this case is a Ponzi scheme?

22 A What did you mention, counsel, I apologize?

23 Q You signed the declaration on October 18th.

24 A Okay.

25 THE COURT: Are you speaking, Mr. Sarachek, of the

1 second Kapila declaration that's at docket 2834 that we just
2 admitted?

3 MR. SARACHEK: Yes, I am.

4 THE COURT: All right, thank you.

5 BY MR. SARACHEK:

6 A Okay. How did it come about that I did -- I was
7 serving as the consultant and expert to the Securities and
8 Exchange Commission. They're the ones who got my
9 declaration.

10 Q This declaration that's submitted to the bankruptcy
11 court?

12 A May I have a look at it?

13 Q Sure.

14 MR. SARACHEK: Can I --

15 THE COURT: Yes, you may.

16 BY MR. SARACHEK:

17 A Oh, I see. My apology. This is the declaration I just
18 signed on October 18. I was confused with the main
19 declaration which was signed last -- in December. That's why
20 I was confused about the date. I now understand the
21 declaration you're referring to.

22 I signed this declaration in the context of, I guess,
23 of adopting my words, my original declaration which was
24 filed, dated, I think, December of last year.

25 Q Can you just tell me with respect to your original

1 declaration in December of 2017 and the work behind it, how
2 many months of work was it -- can you give us some background
3 about your work product there, your declaration?

4 A Sure. We were retained by the Securities & Exchange
5 Commission sometime in the -- I don't have the precise date,
6 but it was in the earlier part of 2017. Perhaps in the first
7 quarter or thereabouts.

8 And our work extended over all the months that past by
9 during the year in stages because we did the work, then we
10 needed more information. We conferred with the SEC. They
11 needed a subpoena or however they obtained additional
12 information, so it came in spurts.

13 And as the information came, my office, my
14 professionals and myself analyzed that information and it
15 kept developing over the stages and culminating in the
16 reconstructions that were done and the analyses that were
17 performed. And, ultimately, the December 2017 declaration.

18 Q Sure. Where's your office located?

19 A Fort Lauderdale, Florida.

20 Q And did the SEC give you all of the information or did
21 you travel to California and other places to gather the
22 information?

23 A I did not travel anywhere. Our entire communication
24 line was with the SEC.

25 Q So, whatever the SEC gave you, you analyzed, is that

1 accurate?

2 A That is correct, yes.

3 Q Okay. With respect to, and you have a statement in
4 your declaration that you give the SEC definition of a Ponzi
5 scheme -- with respect to -- did you do a chronology of this
6 business? Did you look at the inception of the business and
7 then bring it forward to current?

8 A I believe the answer to your question would be yes. In
9 the context of the reconstruction we did which started from
10 early 2012 onwards or it was July 2012. So, if you call that
11 the chronology, the reconstruction was from that period
12 onwards through September of 2017.

13 Q Did you look at the business on a debtor-by-debtor
14 basis?

15 A Well, when we did the work, there was no debtor in
16 existence.

17 Q I'm sorry; entity by entity basis?

18 A We had the bank records for each of the entities. The
19 bank accounts which are listed actually by an exhibit in my
20 declaration. So as to -- if there was a bank account for any
21 entity that was produced to us, yes in that context it was on
22 an entity by entity basis.

23 Q When you were doing this study, did you ask the SEC for
24 more information? Did you indicate to them that you didn't
25 have the full amount of information that you might ordinarily

1 need?

2 A I don't know if I said to them, we don't have the full
3 information that we don't ordinarily need. But every time,
4 as I indicated earlier, in spurts we were noticed. We are
5 identifying any additional bank accounts because sometimes
6 the traces of money would help you do that.

7 If we wanted to connect the dots, we would go back to
8 the SEC and advise them of that and they would make every
9 effort they can to try and obtain the information and provide
10 it to us.

11 Q Were you -- in your analysis, did you see elements of a
12 legitimate real estate business with respect to the
13 Woodbridge cases as a whole?

14 A The book value of the real estate which we noted was
15 recorded in the records was about \$11 million of real estate
16 on that was apparent. There was no real estate being shown
17 in the reconstruction or in the record that we saw as owned
18 real estate because the primary business model was to loan
19 money to borrowers for the purpose of financing real estate.
20 So, real estate ownership, per se, was not the key element in
21 the business model.

22 Q So, for the purposes of your analysis, what you are
23 really looking at is a lending business, not a real estate
24 company that owns significant real estate?

25 A Well, we were looking at anything and everything that

1 the cash flow transactions would demonstrate. And we were
2 looking at the memorandums that were used for the borrowing.
3 We were looking at the websites. We were looking at the
4 model that they were allegedly promoting which, essentially,
5 was to create income by way of the margin the business would
6 get if it was a business. Between the interest they paid to
7 investors and the interest they were going to get from
8 borrowers, and that would be their source of income, if they
9 made any income.

10 Q did you ever speak to anyone at the company?

11 A No, sir.

12 Q You never spoke to anyone, any finance person at the
13 company?

14 A No, that would not be in the cards because I was
15 retained by the Securities & Exchange Commission and my
16 contact would be directive of the SEC. I don't think I would
17 have the ability to pick up the phone and cavalierly call the
18 company's management.

19 Q So, you really had no way of knowing whether the
20 business, at one point, was "legitimate" or whether it was
21 never -- it never had a valid purpose for being?

22 A Well, I do know because the reconstruction tells me
23 what the business actually did versus what it may have
24 proposed to do. That's the reality is the cash transactions
25 for that period of time and they are clearly demonstrative of

1 the fact that this company was not earning income or profits
2 sufficient to meet the obligations it was promising to the
3 investors.

4 Q How many hours did you spend on this project, if you
5 know?

6 A It was well over a thousand billed hours during that
7 period of time. I don't have a precise number.

8 Q And was it you and several associates or primarily?

9 A No, it's a team effort. I mean it's a large enough
10 project that it's not a single person project and we had
11 professionals at different skill levels. And that involved
12 myself, my partner, Melissa Davis who testified here during
13 the early bankruptcy hearing, and some professional staff
14 below her at the analytical level.

15 Q At the outset of your engagement, did the SEC tell you
16 this is a Ponzi scheme or a fraud and here's what we want you
17 to prove?

18 A No, they did not. The scope was simply to try and
19 analyze the records and the banking transactions.

20 Q Okay.

21 MR. SARACHEK: Your Honor, can I have one moment?

22 THE COURT: Yes.

23 MR. SARACHEK: Thank you, Your Honor.

24 THE COURT: Thank you.

25 Would anyone else like to cross-examine Mr.

1 Kapila?

2 (No verbal response)

3 THE COURT: Is there any redirect?

4 MR. TUCHIN: I'll be very brief, Your Honor.

5 BY MR. TUCHIN:

6 Q Thank you for being here, Mr. Kapila, and thank you to
7 the SEC for making Mr. Kapila available to us.

8 Mr. Kapila, could you briefly describe your experience
9 analyzing Ponzi schemes?

10 A I would say it's very extensive. There is an exhibit
11 to my original declaration which expounds on it. I'm a
12 federal bankruptcy trustee. I've handled cases as a trustee
13 which have been Ponzi scheme cases. One of the landmark
14 cases I handled was the Louis Pearlman case in Orlando in the
15 Middle District of Florida and the Transcontinental which is
16 about a half million-dollar Ponzi scheme. And then I had
17 several others I'm involved in, I was.

18 I was involved in representing a very large major
19 creditor group in the Rothstein bankruptcy case in Florida.
20 And aside of that, my firm and I have represented numerous
21 fiduciaries, regularly receivers, in SEC or FDC and CFTC
22 cases as the forensic accountants.

23 I've also served as an expert witness for the, I guess,
24 the U.S. Government of the Department of Justice in some
25 Ponzi cases. So, I think that's the best way to capture it.

1 Q Thank you. And it is your professional opinion that
2 this was as Ponzi scheme?

3 A It is my professional opinion. As I said in my
4 declaration, it has numerous of the attributes of a Ponzi
5 scheme. I normally leave the decision to the trial of fact
6 as to, but, in my view, that's what it is.

7 Q Thank you. And do you recall the date as to which you
8 opine the Ponzi scheme initiated?

9 A It would be no later than the date I signed the
10 declaration which was, I believe, December 17 or 18 of 2017.

11 Q But the date that the Ponzi scheme began?

12 A It began a lot sooner than that in my view because I
13 analyzed the impact of the transactions and the cash flows
14 going back to July of 2012 and I could see where they
15 indicate in the reconstruction that they went on a quarter by
16 quarter basis. This entity or these entities were not
17 generating sufficient cash flows by way of working capital or
18 income to be able to support the obligations they were
19 incurring. And all the records were showing they were
20 accursing book entry item but there was no cash transaction
21 to support them.

22 Q So, I guess, what I'm saying the cash did not match the
23 book entries the way the cash --

24 A Clearly not.

25 Q Thank you. And so, from inception of Fund I which was

1 in the June/July period, you believe since the inception this
2 was a Ponzi scheme?

3 A That's my belief, sir.

4 Q Thank you. And then I take it you continued to believe
5 as you stated in your findings that while there was a real
6 estate portfolio, the business enterprise did not generate
7 sufficient profits to pay the promised return to investors?

8 A That is correct.

9 Q And that the business activities were not consistent
10 with the model that you indicated was promoted and materials
11 you reviewed?

12 A That is correct, sir.

13 Q And that investor money was, in fact, used to pay the
14 large percentage of the returns promised to the earlier
15 investors?

16 A Yes, sir.

17 Q Thank you.

18 MR. TUCHIN: Nothing further.

19 THE COURT: Any recross?

20 MR. SARACHEK: Nothing.

21 THE COURT: Thank you, sir. You may step down.

22 THE WITNESS: Thank you, Judge.

23 (Witness excused)

24 THE COURT: Mr. Sarachek, who else would you like
25 to cross-examine?

1 MR. SARACHEK: Mr. Sharp.

2 THE COURT: Mr. Sharp, will you come forward and
3 be sworn in, please?

4 BRADLEY SHARP, DEBTORS' WITNESS, SWORN

5 THE CLERK: Please be seated. State your full name
6 for the record and spell your last name?

7 THE WITNESS: I'm Bradley Sharp. Last name is
8 Sharp; S-H-A-R-P.

9 THE CLERK: Thank you, sir.

10 CROSS-EXAMINATION

11 BY MR. SARACHEK:

12 Q Good morning, Mr. Sharp.

13 A Good morning.

14 Q So, in referring to your declaration which is document
15 2829 in the docket, you attach Mr. Kapila's declaration and
16 you attach his study. Did you do any independent forensic
17 investigation yourself?

18 A My firm did, yes.

19 Q And what was that? Can you describe what you did?

20 A Certainly. We utilized the work that Mr. Kapila and
21 his firm had done and the SEC was quite helpful in providing
22 data to us. But Mr. Kapila's data, you know, ended in
23 September of 2017, so we had to complete it for the rest of
24 the prepetition period.

25 We also had much greater access to the books and

1 records of the debtors because, obviously, we were in
2 possession of the books and records of the debtor. So, we
3 could take what Mr. Kapila had done and then add to it from
4 the existing books and records, you know, the QuickBooks
5 files we had, additional bank statements, conversations with
6 the remaining employees at Woodbridge. And so, we could then
7 take that what had already been done and then build from it
8 to reach our own conclusions.

9 Q Did you in the course of having conversations with
10 Woodbridge employees, also speak to Mr. Shapiro?

11 A No, I have not.

12 Q Okay. How about anyone in their legal department?

13 A Yes.

14 Q And were you aware that security documents were filed
15 relating to various properties, whether their collateral
16 assignment of security interest, various documents were filed
17 in the -- certainly in the LA accounting recorder's office,
18 were you aware of that?

19 A I reviewed the documents that were given to investors
20 and the documents that Woodbridge has and some that were
21 filed with the county.

22 Q And in reviewing those documents, did you find any
23 valid perfected secured interest in Los Angeles?

24 MR. TUCHIN: Objection.

25 THE COURT: Sustained.

1 BY MR. SARACHEK:

2 Q In reviewing those documents, were part of those
3 documents that you reviewed filed in the LA County Recorder's
4 Office?

5 A I believe so.

6 Q Were there -- I understand that you're not a lawyer.

7 A That's correct.

8 Q But you did speak to the legal department, correct?

9 A Yes.

10 Q And what did they say the purpose of filing those
11 documents were?

12 MR. TUCHIN: Objection, Your Honor. Any
13 communications with counsel would be privileged.

14 THE COURT: Any response?

15 MR. SARACHEK: Look, Your Honor, I'm trying to
16 show that there was a legitimate -- there was a procedure
17 that was followed by the Woodbridge Group of Companies. And
18 I'm asking Mr. Sharp whether he was -- he clearly testified
19 that he spoke to people in the legal department who filed
20 these documents.

21 So, what I'm inquiring of Mr. Sharp is, you know
22 his opinion as to why that was done.

23 THE COURT: Well, you can ask him that question if
24 you like.

25 BY MR. SARACHEK:

1 Q Why do you think the legal department filed documents
2 with the LA County Recorder's office?

3 A To make the investors happy. To show -- to give the
4 impression that there was collateral.

5 Q So, it's your belief that the legal department
6 perpetrated a fraud?

7 A I think it's certainly my belief that a fraud was
8 perpetrated. You know, had I sat down and said that certain
9 people are responsible for certain pieces of it, no I have
10 not done that part. There certainly was a fraud that was
11 perpetrated.

12 Q When you were hired, you reviewed the collective
13 balance sheets of the debtors, correct?

14 A I guess, I'm going to have to have you be more
15 specific, which debtors?

16 Q Well, I'm talking when -- the 306 debtors, you know.
17 You in your declaration talk about asset values and so, and
18 you also talk about liabilities. So, if you would, what do
19 you believe today the aggregate asset value -- what do you
20 believe the aggregate asset value was at the time that you
21 were retained?

22 A Well, I guess, let me answer it several ways. When we
23 came on, there were no financial statements that had been
24 prepared. The property-owning debtors did not have their own
25 separate books and records. There was not a -- they utilized

1 QuickBooks for the entire operation.

2 The individual operating debtors did not have their
3 QuickBooks. So, everything was comingled and mixed. And as
4 near as we could tell, there really wasn't a -- there
5 certainly wasn't a balance sheet for each debtor. There was
6 some sporadic financial information, but there really wasn't
7 financial statements prepared for the debtors.

8 So, at the time we came onboard, there really wasn't a
9 lot of information about the value of the properties.
10 Fortunately, the debtor at the same time I was employed, Mr.
11 Fred Chin who had done some valuation work before as a part
12 of the DIP, and then he continued to update that data on the
13 value of the properties.

14 We even had trouble digging through the books and
15 records to find out the costs of each particular property.
16 You know, what was the cost? What had been spent on it? The
17 date -- that was something that was developed over time
18 through our forensic accounting analysis.

19 Q Okay.

20 MR. SARACHEK: Can I, Your Honor, approach him
21 with this declaration?

22 BY MR. SARACHEK:

23 Q I'm turning to page 9 where you basically say in 2013
24 no properties were sold and approximately \$3.4 million was
25 paid to investors in principal and interest.

1 On page 10, you say in 2014 no properties were sold and
2 approximately \$17.6 million was paid to investors in
3 principal and interest.

4 In 2015, ten properties with approximately net proceeds
5 of 18.5 and approximately \$84.1 million. So, clearly, you
6 did do a chronology here. Were there elements of this
7 business that were legitimate? Were there elements of this
8 business that were legitimate?

9 A No.

10 Q So, what are these transactions?

11 A Exactly what it says; they were asset sales. You're
12 missing there is the investments that were made by the
13 investors required monthly payments. These sporadic asset
14 sales were not at all sufficient to cover the interest carry
15 and this was the only source of cash-flow.

16 I think as Mr. Kapila said the public business model
17 where Woodbridge was going to be making loans to developers,
18 those loans would then generate cash-flow which would pay the
19 interest to the investors. Well, we have since learned there
20 were no loans. These were just funding two related party
21 entities. So, there wasn't a structure in place that could
22 service the investors and the asset sales were nowhere near
23 sufficient in order to do that.

24 Q Today, what are the aggregate assets and liabilities of
25 the debtors?

1 A I think if you look at the disclosure statement and you
2 look at the values from the business plan and then the
3 various estimates of liabilities those are pretty consistent
4 with what we see right now.

5 Q Well, what's the number?

6 A I don't have that disclosure statement in front of me.

7 Q Was the number something like 800 million and 1.2
8 billion of liabilities; 800 million of assets and 1.2 billion
9 of liabilities?

10 A I think if you look at the schedule to the disclosure
11 statement that shows what the value is.

12 Q Okay. So --

13 A So, if you put that in front of me we can walk through
14 that.

15 MR. SARACHEK: Okay. Your Honor, do you mind if I
16 grab the disclosure statement?

17 THE COURT: Go right ahead.

18 BY MR. SARACHEK:

19 Q So, if you look at the projected analysis that's
20 attached to the disclosure statement, which this is docket
21 2398, this is Page 216 of 576, it shows the total assets of
22 \$601.8 million dollars. And then on the total claims, again
23 this was the estimate of claims, close to a billion dollars'
24 worth of claims.

25 A Okay.

1 Q And to date how much -- in the aggregate how much real
2 estate has been sold if you recall?

3 A I don't recall.

4 Q A couple hundred million?

5 A Probably. I don't recall. I'm focused, obviously, on
6 the forensic accounting and the bankruptcy piece.

7 Q Okay. So, even if the stated purpose of this business,
8 which was a real estate lending business wasn't valid. In
9 fact, if noteholders had a lien on properties wouldn't they
10 have an interest in the assets which, you know, at the time
11 that this bankruptcy commenced it was approximately \$800
12 million dollars?

13 A Again, I don't know the value at the time the
14 bankruptcy was commenced. That's a pretty broad brush
15 dealing with the investors because they were investors that
16 were theoretically invested at particular properties. There
17 were investors that were invested at the mezzanine level. So
18 they really didn't have a particular property, so they were
19 not even theoretically secured. Then there were investors
20 that were theoretically at a property that Woodbridge didn't
21 even own. So, they, obviously, didn't have an interest in
22 that property because none of the Woodbridge debtors actually
23 owned that property; that was still just in the planning
24 stage.

25 So, that would be -- I would hesitate to paint that

1 broad of a brush because it's got to be much more detailed
2 then that.

3 MR. SARACHEK: Okay. Thank you. Thank you, Your
4 Honor.

5 THE COURT: Does anyone else like to cross-examine
6 this witness?

7 (No verbal response)

8 THE COURT: Any redirect?

9 MR. TUCHIN: Thank you. Again, I will be very
10 brief, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. TUCHIN:

13 Q Mr. Sharp, I take it you still stand by everything
14 that's in your declaration?

15 A I do.

16 Q I take it -- well, let me just ask you; you've reviewed
17 the notes and the units, the form of the notes and the units?

18 A I have.

19 Q And the notes, what do they provide in terms of
20 interest payments?

21 A Monthly interest payments.

22 Q So, from the very first day a note was issued what was
23 the source to make that first interest payment?

24 A The only source that Woodbridge had was the sale of
25 assets. There was no third-party borrower. So, that's all

1 they had or, unfortunately, new investor money.

2 Q Right. And as you've testified there were no sales in
3 the first two years?

4 A That's correct. The only cash they had was from new
5 investors.

6 Q Thank you. That was not was described to investors,
7 was it?

8 A No.

9 Q As you sit here today can you track an individual
10 investor's contribution to a fund to any specific piece of
11 property?

12 A No. That's not possible.

13 Q And do you believe with additional time you could track
14 an individual investor's investment to a specific piece of
15 property?

16 A No. That is not possible.

17 Q And why is that not possible?

18 A The way Woodbridge manages business the money from the
19 investors came into a fund bank account and was left there
20 and comingled with other investors. So, that's the first
21 comingling. Periodically, round numbers were transferred
22 from the fund to Woodbridge Group or to structure in the
23 early days. Then, round money was transferred from either
24 group or structured to typically an attorney trust account
25 and that trust account then money was sent to escrow to

1 purchase property.

2 So, the investor money was first comingled at the fund,
3 then the fund money was comingled at Woodbridge Group and
4 then Woodbridge Group money was comingled further at the
5 attorney trust account level. So, there is -- it is
6 impossible to trace the money from the investor to the
7 property because there are three different places where it's
8 comingled.

9 Q And, again, I just want to follow-up. There are
10 circumstances where an investor thought they were getting an
11 assignment of a lien for a piece of property that the debtor
12 never acquired?

13 A That's correct. The documents that were sent to the
14 investor referenced a specific property and the collateral
15 documents referenced a specific property. The debtor or its
16 related entities did not own that property. The purchase had
17 never gone through.

18 Q So, as you sit here today can you establish that the
19 notes given by a Propco debtor a fund represent a fair
20 portrayal if it was actually loaned to that fund?

21 A No, not at all.

22 Q You can't, as you sit here today, say whether it, in
23 fact, bears any semblance to reality?

24 A Well, I can say there is not any semblance to reality.
25 The money did not go from the fund to the property-owning

1 debtor where the note is reflected. The money stayed at the
2 fund and was used to pay other investors. Some of it went to
3 group and some of it went to -- you know, and on, and on, and
4 on as I was previously describing. Only a very minor amount
5 went from a fund to a property-owning debtor.

6 So, the note between the property-owning debtor and the
7 fund no consideration as exchanged for that note. It's a
8 fictitious piece of paper.

9 Q Thank you.

10 In fact, I believe you testified with regard to the
11 Owlwood property that the face amount of the note exceeds the
12 amount that was spent on that property, is that correct?

13 A Correct. More was borrowed from investors than the
14 purchase price for the property. It oversubscribed
15 producers.

16 Q Right. And when you say more was borrowed you don't
17 actually know what was borrowed, correct?

18 A No.

19 Q You just know that the note exceeds the amount that was
20 spent to purchase the property?

21 A Well, I guess when I say what was borrowed what the
22 funds borrowed for investors that they said was for Owlwood.

23 MR. TUCHIN: Thank you. Nothing further, Your
24 Honor.

25 THE COURT: Thank you. Any re-cross?

1 RECROSS EXAMINATION

2 BY MR. SARACHEK:

3 Q Mr. Sharp, are you aware of how the Hankey Capital, the
4 debtor-in-possession lender, chose certain properties to
5 obtain security on and didn't choose others? Are you aware
6 of that?

7 A I am.

8 Q How did they come to that?

9 A Obviously, I was not there at the time and after the
10 fact, but in my conversations with the Hankey Capital people
11 they represented to me that they were just given a list by
12 the debtor of here are the properties that we want to provide
13 collateral to you. So, it was the debtor that chose them and
14 selected those properties for them?

15 Q And are you aware that various noteholders were served
16 with notice that property which they had an interest in was,
17 you know, being -- that the debtor-in-possession loan was
18 actually coming on top of them on that property. Are you
19 aware of that?

20 A I guess I characterize that differently. I was aware
21 that investors received notice as they should have, that a
22 property that they claimed an interest in was being pledged
23 as collateral. So, I am aware of that notice to the
24 investors.

25 Q Are you aware of how much due diligence Hankey Capital

1 did prior to entering into the debtor-in-possession loan?

2 A I don't. I wasn't there at the time.

3 Q Are you aware that they were planning with Mr. Shapiro
4 to recapitalize the entire company?

5 A I have not had that conversation with him.

6 MR. SARACHEK: Okay. Thank you.

7 MR. TUCHIN: Nothing further, Your Honor.

8 THE COURT: Thank you, sir. You may step down.

9 THE WITNESS: Thank you.

10 (Witness excused)

11 THE COURT: Mr. Sarachek, would you like to cross-
12 examine anyone else?

13 MR. SARACHEK: With respect to the -- I'm sorry.

14 What's her name, Michael?

15 MR. TUCHIN: Ms. Young.

16 MR. SARACHEK: Yes. Ms. Young.

17 THE COURT: Very well. Thank you. Ms. Young,
18 will you please come forward and be sworn in.

19 EMILY YOUNG, WITNESS, SWORN

20 THE CLERK: Please be seated and state your full
21 name for the record and spell your last.

22 THE WITNESS: Emily Young, Y-O-U-N-G.

23 CROSS EXAMINATION

24 BY MR. SARACHEK:

25 Q Good morning, Ms. Young.

1 A Good morning.

2 Q I really only have question which goes to, sort of,
3 methodology in the tabulation of the ballots. Did you
4 tabulate ballots for each of the 306 debtors?

5 A We did not receive valid ballots for all debtors.

6 There is attached to the declaration an exhibit showing a
7 debtor by debtor analysis of the ballots received.

8 Q So, you didn't receive ballots for every debtor?

9 A Correct.

10 MR. SARACHEK: Okay. Thank you.

11 THE COURT: Any redirect?

12 MR. TUCHIN: No.

13 THE COURT: Thank you. You may step down.

14 (Witness excused)

15 THE COURT: Mr. Sarachek, do you want to cross-
16 examine Mr. Chin?

17 MR. SARACHEK: No thank you, Your Honor.

18 THE COURT: All right. Do you have any of your
19 own evidence to present?

20 MR. SARACHEK: I do not. We filed an objection,
21 Your Honor. I am not going to repeat all that's in the
22 objection. It's before the court. I understand that Mr.
23 Tuchin may want to, you know, refute some of our legal
24 arguments.

25 THE COURT: I get that feeling too.

1 (Laughter)

2 MR. SARACHEK: Mr. Pachulski might say a word or
3 too, but no. Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 So, I guess at this point I guess there's
6 agreement that the evidentiary record has closed. All right.
7 It would now normally be time for argument. Would anybody
8 like a short break before we do that or shall we just jump
9 right in?

10 UNIDENTIFIED SPEAKER: We're prepared to continue,
11 Your Honor.

12 THE COURT: All right. I'll hear first from the
13 debtor and then anyone else who wishes to speak. I'll give
14 Mr. Sarachek the last word.

15 MR. HOLT: Thank you, Your Honor. Good morning.
16 Whitman Holt from Klee Tuchin Bogdanoff & Stern on behalf of
17 the debtors and debtors-in-possession.

18 Your Honor, with regards to the statutory elements
19 for confirmation under Bankruptcy Code Section 1129, of
20 course, the debtor bears the burden of proof. We filed a
21 detailed memorandum of law that's at docket number 2828 that
22 outlines the statutory elements.

23 I'm going to save the court unless the court would
24 prefer the oral checking the box on all of the elements,
25 particularly the ones that are uncontested. I'll focus on

1 the points raised by Mr. Saracheck on behalf of his clients
2 which, I think, he appears to be pressing all of them.

3 THE COURT: I've read the submissions including
4 the memorandum of law. So, I don't need the dramatic reading
5 from the podium.

6 (Laughter)

7 MR. HOLT: Thank you, Your Honor.

8 Before I get to the specific points I do want to
9 note for the record, particularly the liquidation analysis
10 prepared by DSI and included with the disclosure statement at
11 Exhibit B, as well as the Sharp declaration at Paragraphs 34
12 to 39 readily establishes the best interest of creditors test
13 under Section 1129(a)(7), Your Honor. Importantly, that
14 analysis included multiple scenarios.

15 DSI prepared a noteholder high-case that assumed
16 that the noteholders received all distributable value that's
17 available in a Chapter 7 scenario. They also prepared a
18 unitholder high-case that made a *pari passu* assumption.
19 Neither of those results would obtain absent very long and
20 hard-fought litigation, but they prepared the analysis to see
21 what those numbers showed.

22 What the results showed, Your Honor, is that in
23 all possible scenarios noteholders and unitholders do better
24 under the plan than they do in Chapter 7. This satisfies
25 Section 1129(a)(7) and there's no contrary argument let alone

1 any contrary evidence from Mr. Saracheck or anyone else.

2 The reason I'm mentioning this, Your Honor, is
3 that the bankruptcy code contains two provisions that protect
4 parties that are similarly situated to Mr. Saracheck's
5 clients; parties that are descending minority holders and a
6 class that's overwhelmingly accepted the plan. Those two
7 statutory protections, Your Honor, are first 1123(a)(4). The
8 bankruptcy code does not allow parties to be classified
9 within the same class and allow a majority or members of the
10 class to receive special treatment that the minority is not
11 receiving. Your Honor, that's not happening here.

12 Everyone that is in Class 3, Class 4, Class 5 and
13 Class 6 is receiving the same treatment or with respect to
14 elections and options that were available under the plan had
15 a full and equal opportunity to receive and make their choice
16 about what they wanted to receive under the plan. So,
17 1123(a)(4) satisfied, and there's really no dispute about
18 that.

19 The second bedrock protection, Your Honor, is
20 Section 1129(a)(7). Again, as I just noted the evidence re-
21 soundly shows that the best interest of creditors test is
22 satisfied.

23 So, those are the two primary protections for Mr.
24 Saracheck's clients. They're not disputed and they're
25 satisfied. The rest of his issues, Your Honor, largely go to

1 issues that can be addressed on a class by class basis and as
2 the ballot tabulation shows, and I'll summarize briefly in a
3 moment, all the classes in which his clients are situated
4 have overwhelmingly accepted the plan. What that means, Your
5 Honor, as a basic principal of bankruptcy law is that his
6 clients are bound whether they like it or not to the
7 overwhelming majority vote in acceptance of the plan by the
8 classes in which they were classified.

9 Just so the record is clear, Your Honor, there has
10 been no argument, nor could there be one, that there's been
11 any improper classification or that the classes that were
12 constructed and solicited under the plan were improperly
13 formulated.

14 So, Your Honor, I would like to briefly go through
15 what I think are the six points we tried to distill out of
16 Mr. Sarachek's responses. We noted it was not structured in
17 a systematic way. So, we tried to reformulate the arguments
18 as best we could to address them.

19 The first argument which we heard briefly this
20 morning, Your Honor, is that the Sarachek parties contend
21 that they're secured. They also contend that there needs to
22 be a reserve or other mechanism established for them under
23 the plan in order to deal with the contingent probability
24 that Your Honor reverse on appeal.

25 THE COURT: So, other than Owlwood what are the

1 properties that are subject to alleged liens?

2 MR. HOLT: Your Honor, I don't have a detailed
3 listing, but there are additional properties that are out
4 there. Mr. Sarachek's client group seems to be shifting and
5 every moving. There was a recent adversarial proceeding
6 filed earlier this month that includes a broader plaintiff
7 group than the group that was -- the plaintiff group in the
8 Owlwood proceeding that your court determined.

9 From the debtors' perspective, Your Honor, we
10 don't think the analysis is going to be substantially
11 different, but there are other properties in which there are
12 asserted intercompany security interest that will be
13 eliminated under the plan settlement and also that Mr.
14 Sarachek may be asserting direct interest in the same theory
15 that he lost earlier this month.

16 THE COURT: Ballpark, any idea how many?

17 MR. HOLT: There are quite a few. None as
18 valuable as Owlwood, Your Honor, but I mean there are 10 or
19 more individual properties in which a similar argument could
20 be made that hasn't been made.

21 THE COURT: Thank you.

22 MR. HOLT: So, Your Honor, with respect to what
23 should happen pending appeal during the pendency of his
24 appeal Mr. Sarachek offers zero analysis in his response as
25 to why Your Honor is likely to get reverse. We, obviously,

1 don't think Your Honor is likely to be reverse. There is
2 some theoretical non-zero chance that could happen. Mr.
3 Saracheck certainly made no case or made any explanation.

4 THE COURT: I never develop any odds myself on
5 that.

6 (Laughter)

7 MR. HOLT: That's fair enough, Your Honor.

8 So, no stay was sought in the language of a stay
9 pending appeal. There certainly has been no substantial
10 grounds or any grounds, really, for reversal that have been
11 shown. Your Honor, what happens in the meantime is not a new
12 issue. This is an issue that is dealt with in the case law
13 including case law in this district.

14 I'd point Your Honor, District Judge Sleet wrote
15 an opinion in the Washington Mutual case where Bankruptcy
16 Judge Walrath had made certain decisions during the middle
17 part of the case. There was a pending appeal. The parties
18 who had lost objected to confirmation of the Washington
19 Mutual plan. They also tried to get District Judge Sleet to
20 stop confirmation from going forward. District Judge Sleet
21 said there's an un-stayed ruling of the Bankruptcy Court;
22 although, there's a pending appeal that does not prevent the
23 Bankruptcy Court from going forward with plan confirmation
24 predicated on the correctness of Judge Walrath's earlier
25 decision. Judge Walrath can give effect to her decision

1 notwithstanding the pendency of the appeal.

2 Similarly, in the Oakwood Homes case, Your Honor,
3 District Judge Farnan dealt with a similar issue arising out
4 of an appeal from a case before Bankruptcy Judge Walsh. The
5 debtors had objected to a claim, Judge Walsh had disallowed
6 the claim, there was a pending appeal by the losing party,
7 the losing party objected to confirmation and said I need a
8 reserve established under the plan. Bankruptcy Judge Walsh
9 said no, I disallowed the claim notwithstanding your appeal;
10 that's my ruling, I believe it was correct. He established a
11 zero dollar reserve under the plan. The losing party
12 appealed and District Judge Farnan wrote an opinion,
13 published opinion, saying, no, that's correct. The
14 Bankruptcy Court can give effect to its prior ruling. It
15 does not need to establish any reserve for a claim that's
16 been disallowed notwithstanding the pendency of the appeal.

17 With regard to the theory that we're hearing from
18 Mr. Sarachek, Your Honor, we cited in our papers a decision
19 from Bankruptcy Judge John Hoffman, Jr., in Ohio dealing with
20 very, very similar facts in which a party asserted it had a
21 security interest in property of the debtor. Judge Hoffman
22 said, no, you're wrong. The party appealed to the back. The
23 back appeal was pending when the debtor's plan was before
24 Judge Hoffman. The losing party said well, Your Honor, the
25 plan's not confirmable because I'm asserting a security

1 interest. Even though I lost I'm pursuing an appeal. Judge
2 Hoffman said, no, that's not correct. I ruled that your
3 unsecured, the debtor's plan gives effect to my ruling, the
4 pendency of your appeal is out there, but you haven't
5 established any basis for disagreement with my prior ruling.
6 The debtor's plan can appropriately go forward and give
7 effect to that ruling.

8 So, Your Honor, that's the case law. That is what
9 the case law teaches us, that Mr. Sarachek is simply wrong
10 about this.

11 THE COURT: Does the plan anticipate that with
12 respect to any post-confirmation property sales that court
13 orders will be sought or does it provide for another process?

14 MR. HOLT: The plan and the wind-down LLC
15 agreement reserve the right of the entities that come to
16 court and seek relief under Section 363 if they believe
17 appropriate. It's not obligatory, but I suspect there may be
18 buyers who want that relief and the court would see those
19 sorts of motions.

20 The second point, Your Honor, with respect to the
21 secured creditor litigation theory is, again, the collateral
22 in which Mr. Sarachek's parties are asserting an interest or
23 the intercompany notes and intercompany mortgages between the
24 fund debtors and the Propco debtors. As Mr. Sharp testified
25 moments ago it's largely a loosery paper.

1 Under the plan, as part of the global settlement,
2 those intercompany notes and liens will be extinguished upon
3 the effective date. We think in large part that moots the
4 issues that Mr. Sarachek has been pursuing and may pursue on
5 appeal because if the underlying asserted collateral, what
6 they assert they have a security interest in is eliminated,
7 which it will be under the plan, it's purely academic whether
8 they have a security interest in that asset or not because
9 the asset no longer exists. A security interest in nothing
10 is the same thing as no security interest in nothing, Your
11 Honor.

12 I will get to that aspect of the plan in just a
13 moment because they're challenging that part of the
14 settlement, but we think that moots out and eliminates
15 separately the vast majority of what Mr. Sarachek's been
16 pursuing and may continue to pursue on appeal. So, Your
17 Honor, we think this objection should be overruled and that
18 there's no basis, in the case law or otherwise, to require
19 any reserve or other modification to the plan to address
20 their appeal or to address this general issue.

21 The second issue that Mr. Sarachek raises is
22 whether or not there's a Ponzi scheme, Your Honor, and he
23 claims that there's been no evidence.

24 THE COURT: You can move on.

25 MR. HOLT: Okay. Thank you, Your Honor.

1 The third issue that Mr. Saracheck raises is the
2 propriety of substantive consolidation, Your Honor. Here,
3 the case law, including Owens Corning, teaches that entities
4 may properly be substantively consolidated with creditor
5 consent. Here, all classes of creditors who are affected by
6 the substantive consolidation, the noteholders, general
7 unsecured creditors, the unitholders have voted by
8 overwhelming margins to accept the plan and we think provided
9 consent to the substantive consolidation.

10 I'd note, Your Honor, at the other debtors' level,
11 Woodbridge Group and the Property Co.'s, consent to
12 substantive consolidation as unanimous among all creditors
13 who voted. There was no creditor who's a creditor of
14 Woodbridge Group of Companies, or the Propco's, or Mezco's
15 below Woodbridge Group of Companies who objected. So, we
16 have broad based consent at that level, Your Honor.

17 That puts this case into the consent justification
18 and at the fund levels, Your Honor. I'd point the court to -
19 - Mr. Saracheck raised questions about the debtor by debtor
20 voting analysis Ms. Young attached as Exhibit A to her
21 declaration and chart that broke down each class by each
22 debtor. On a debtor by debtor basis every group of
23 unitholders and noteholders that each debtor voted to accept
24 the plan. So, that does two things, Your Honor.

25

1 First, as I'll touch on in a moment, it provides
2 an impaired accepting class at every one of the fund entities
3 on a stand-alone basis. Second, it provides creditor consent
4 by the parties that are affected by the substantive
5 consolidation of the fund debtors together to that
6 substantive consolidation.

7 So, Your Honor, the consent here and the fact that
8 we don't have a rejecting effected class that's going to be
9 adversely impacted by substantive consolidation moves this
10 case out of the New Century model which Mr. Sarachek cited in
11 his opposition. New Century as I'm sure the court recalls --

12 THE COURT: Vividly.

13 MR. HOLT: -- there was an objecting class of
14 creditors effected by substantive consolidation that had
15 rejected the plan. These aren't the facts before the court
16 today. The facts before the court today put this case in, I
17 think, the much more instructive precedent of the court's
18 recent opinion in Abisena (phonetic), and I may be
19 pronouncing this wrong, Holding in which, again, substantive
20 consolidation was proposed under the plan, the creditors
21 overwhelmingly voted to accept the plan and there were a few
22 dissident holders who were bound by the consent of the
23 accepting classes.

24 Your Honor, separate and apart from creditor
25 consent the facts here support consolidation of the other

1 debtors into Woodbridge Group of Companies under the second
2 rational in Owens Corning which is hopeless comingling of
3 assets and liabilities of the entities to be substantively
4 consolidated. Mr. Sharp said that in his declaration at
5 Paragraphs 11 through 19. He reiterated and reaffirmed that
6 testimony and I think made it even stronger here in court
7 today, Your Honor.

8 So, even if we didn't have creditor consent, which
9 we do, consolidation of those entities is appropriate under
10 the second prong of Owens Corning. The Kapila declaration
11 further supports this conclusion when it similarly testifies
12 about comingling of assets and liabilities as among
13 Woodbridge Group of Companies and the entities that actually
14 own the properties, Your Honor.

15 We followed the plan settlements motion in early
16 October out of an abundance of caution seeking, among other
17 things, to substantively consolidate Woodbridge Group of
18 Companies and all the other debtors based on satisfaction of
19 the second Owens Corning rationale. To the extent the court
20 has any concern about substantively consolidating those
21 entities together under the plan the court could do so
22 independent from the plan pursuant to the plan settlements
23 motion.

24 Regardless, Your Honor, we've got a belt, and we
25 have suspenders and we have a piece of chewing gum as well to

1 hold the pants up. There are three different ways to get to
2 substantive consolidation here, Your Honor; all of which are
3 completely appropriate. So, Your Honor, we'd again submit
4 that that aspect of the Sarachek objection should be
5 overruled.

6 The fourth point that Mr. Sarachek raises is he
7 complains that the plan's "avoiding" what he calls valid
8 intercompany liens. Your Honor, both of those words, the
9 verb and the adjective, are both incorrect. There is no
10 avoiding of anything under the plan. There's an elimination
11 of asserted intercompany claims as part of a comprehensive
12 settlement under the plan. Nothing is being avoided. There
13 is not an avoidance judgement. We're not seeking a judgment
14 entered in any of the avoidance powers under the plan;
15 instead, there's a settlement and compromise that resolves
16 intercompany claims and liabilities.

17 Second, I think almost everyone else in the
18 courtroom would stand-up and disagree with the label of those
19 intercompany liens and claims as valid. As Mr. Sharp
20 testified in court, earlier today, these were fictitious
21 intercompany amounts that had no bearing to what was actually
22 loaned between the fund debtors and the PropCo debtors. In
23 most cases there were no monies advanced from the fund
24 debtors to the PropCo debtors. They went through the
25 comingled pipeline that Mr. Sharp described. They had

1 virtually no bearing to what the purchase price of the
2 property was either, Your Honor.

3 There is a pending adversary proceeding that the
4 creditors committee sought and obtained standing to pursue
5 and file. That adversary proceeding is on file. It attacks
6 these intercompany liens and claims on a number of different
7 fronts, Your Honor, including that there are actual
8 fraudulent transfers, constructive fraudulent transfers and
9 simply invalid as a matter of non-bankruptcy law because
10 there was an adequate consideration provided to support the
11 purported intercompany loans and liens, Your Honor.

12 These could be appropriately settled under the
13 plan and the creditors committee's adversary proceeding can
14 be resolved under the plan for all of the reasons Your Honor
15 discussed in the Exide published decision that you wrote back
16 in, I think, 2003; 15 years ago, at this point.

17 THE COURT: It seems like yesterday.

18 (Laughter)

19 MR. HOLT: Plants every day around the country
20 settle intercompany claims, and liens in multi-debtor
21 estates. This is not something new that we're doing for the
22 first time in this case and there is nothing inappropriate
23 about it.

24 Your Honor, Mr. Sarachek doesn't like the
25 settlement, but it's well within the bounds of reasonableness

1 for all the reasons set forth in the plan settlements motion
2 and, again, in the adversary complaint that the committee's
3 filed. Here, Your Honor, I think this is an area where the
4 fundamental black letter principal that dissenting creditors
5 within an accepting class are bound by what the class does.
6 The classes, all classes of creditors, particularly the
7 noteholders in Class 3 who are affected by this settlement
8 and voted overwhelmingly to accept it.

9 So, although Mr. Sarachek doesn't think it's a
10 fair settlement the class in which his clients are situated
11 have disagreed vehemently. Your Honor, I think that class
12 acceptance of the settlement and its overall reasonableness
13 provides a sufficient basis for the court to approve it.

14 The fifth argument that Mr. Sarachek raises is the
15 Section 1129(a)(10) issues. Mr. Sarachek points to this
16 court's decision Tribune. Makes the, I think, easy argument
17 that, well, we have 306 debtors here, Your Honor, so the
18 debtors have to have an impaired consenting class at each
19 one.

20 This argument doesn't work, Your Honor, for at
21 least two reasons. First, at the fund debtors where Mr.
22 Sarachek's clients actually have claims this is not even a
23 theoretical issue. The voting report shows that at every
24 fund debtor there is either an impaired accepting class of
25 notes or an impaired accepting class of units or both. So,

1 on an entity by entity basis, Your Honor, every fund debtor
2 that has creditors has an impaired accepting class.

3 Your Honor, we noted in a footnote in the brief
4 that there is a seventh fund debtor that's not shown on the
5 tabulation report as having any creditors voting in favor of
6 the plan because there are no creditors at that fund entity.
7 So, although it's a debtor that exists as reflected in the
8 schedules that were filed for that entity there aren't any
9 creditors who needed to be solicited and there were no
10 ballots returned at that entity for or against the plan
11 because there were no creditors to solicit votes on.

12 So, that does not have an impaired accepting class
13 because it doesn't have a class of creditors that's impaired
14 under the plan. And because it doesn't have a class of
15 creditors that's impaired under the plan, if we're doing a
16 debtor by debtor analysis and looking at 1129(a)(10) on an
17 entity by entity basis 1129(a)(10) does not need to be
18 satisfied as to that entity, Your Honor, because the plan
19 with respect to that entity does not include an impaired
20 class of creditors as to that entity.

21 Second, Your Honor, Tribune makes clear repeatedly
22 that it was not a case involving substantive consolidation.
23 Your Honor articulated a legal principal that expressly
24 applied, "absent substantive consolidation." Well, here,
25 Your Honor, we have substantive consolidation. We have it

1 proposed under the plan as to the fund debtors, as to
2 Woodbridge of Companies and the other debtors. We also have
3 it proposed independently of the plan in the plan
4 settlement's motion, Your Honor.

5 So, within the teachings of Tribune we're outside
6 of that problem that Section 1129(a)(10) creates. So, moving
7 down from the fund debtors to the other debtors, Your Honor,
8 every other debtor that had a creditor vote on the plan had a
9 class that accepted. There was unanimous consent at
10 Woodbridge Group of Companies and every other debtor where
11 someone voted.

12 There are, Your Honor, unlike at the fund level,
13 debtor entities that have creditors where no one at that
14 debtor returned a ballot one way or the other. So, there is
15 not a rejecting class and there's not an accepting class.
16 Your Honor, we'd submit that to the extent that's an issue at
17 all it's resolved by the substantive consolidation proposed
18 under the plan which on its face differentiates this case
19 from Tribune.

20 We'd also submit, Your Honor, that if Your Honor
21 is in any way uncomfortable about getting there in that
22 fashion the plan settlement's motion proposes to
23 substantively consolidate all of those entities independent
24 from the plan. Once that substantive consolidation is done,
25 Your Honor, there's one entity, consolidated Woodbridge of

1 Companies, that has one class of creditors, Class 4, and that
2 one class of creditors is the impaired class that is not only
3 consenting, but voted 100 percent to accept the plan, Your
4 Honor. So, that satisfies Section 1129(a)(10).

5 Either way, Your Honor, either through substantive
6 consolidation under the plan or independently through the
7 plan settlements motion this issue goes away as to those
8 entities. So, there is no 1129(a)(10) problem here, Your
9 Honor. It's satisfied by the fund entities without
10 substantive consolidation and substantive consolidation,
11 under either road, satisfies as it to the other entities.

12 Finally, Your Honor, Mr. Sarachek complains that
13 unitholders should be receiving full *pari passu* treatment
14 with noteholders if the court's finding a Ponzi scheme or
15 substantively consolidating entities. Your Honor, this
16 argument just ignores the plan's comprehensive settlement of
17 the noteholder/unitholder dispute which is intended to
18 resolve this and which is eminently reasonable.

19 First, Your Honor, there are certainly arguments
20 that the units are debt like the notes, but there are many
21 arguments to the contrary. This is a complex fact intensive
22 issue with colorable points to be made on both sides as we
23 detailed at length in the plan settlements motion. In fact,
24 during plan negotiations Mr. Sabin made exactly the argument
25 that Mr. Sarachek articulated which is this is a Ponzi

1 scheme. In Ponzi schemes everyone was defrauded so everyone
2 should be treated equally.

3 There were responses to that argument including,
4 first, the fact that there's no case that actually says
5 that's the principal that applies for Section 1129 or 1123
6 purposes in the context of plan confirmation. There is
7 certainly no opinion from the Supreme Court of the United
8 States, or the Third Circuit Court of Appeals or any court in
9 Delaware that establishes that principal, but it's an
10 argument one could make.

11 There are also arguments people could make based
12 on the terms of the documents here, Your Honor, that the
13 units repeatedly, there is an example included with Mr.
14 Sharp's declaration, reference the units as an equity
15 investment with upside returns and things with no equity.
16 There are arguments people could make that there is no
17 bankruptcy code version two with special rules for Ponzi
18 schemes. The bankruptcy code, as congress wrote it, doesn't
19 even use the word Ponzi scheme, Your Honor.

20 So, if something is debt or equity the same
21 principles that would apply outside the Ponzi scheme context
22 apply equally within the Ponzi scheme context. We don't have
23 different rules and the statutory text doesn't give different
24 principals that apply only in Ponzi scheme cases, Your Honor.

25 So, this was something all of the parties took

1 into account. The parties considered this. They considered
2 all of the competing arguments that all of the very able
3 counsel in the room was able to come up with on each side of
4 this, Your Honor. And there was a negotiated compromise that
5 afforded the unitholders treatment as if they had claims at a
6 72.5 percent ratio relative to noteholders, Your Honor.

7 I think it's clear, based on the uncertainty, that
8 some level of discount is appropriate here, Your Honor.
9 There has to be some discount because there are arguments
10 that could be made both ways, Your Honor. Whenever arguments
11 could be made both ways *pure pari passu* or 100 percent
12 treatment is not a settlement; it's a victory. It's a
13 victory that would only be obtained through a hard-fought
14 litigation, Your Honor.

15 So, we'd submit, for the reasons detailed in the
16 plan settlements motion, that 72.5 percent is a reasonable
17 point that could be reached within the realm of acceptable
18 outcomes. It was something that was negotiated among
19 stakeholders who had every reason to be fighting on both
20 sides of this, Your Honor.

21 So, Mr. Saracheck doesn't provide any reason why
22 that's wrong other than making one of the many, many
23 different arguments that could be made on both sides of this
24 complicated issue.

25 THE COURT: Well, Mr. Sabin made it too you said.

1 MR. HOLT: That's true.

2 THE COURT: I can't imagine --

3 MR. HOLT: Along with some other arguments. He
4 had many more.

5 (Laughter)

6 MR. HOLT: These were all fully taken into
7 account.

8 THE COURT: Bankruptcy sometimes does -- well,
9 creates situations with strange bed-fellows and those would
10 be two of them.

11 (Laughter)

12 MR. HOLT: I think that's fair. I think they both
13 probably would agree with that, Your Honor.

14 Second and even more importantly, Your Honor, is
15 the fact that the settlement's been overwhelmingly accepted
16 by the people who are affected by it. The class of
17 unitholders voted to accept the plan by more than 97 percent
18 number and nearly 97 percent in amount. So, the people who
19 have every incentive, economic incentive, to fight this if
20 they think it's worth fighting have overwhelmingly said we
21 don't want to fight this. In fact, we think 72.5 percent is
22 a great number and we're happy to accept it.

23 This comes full circle to where I began, Your
24 Honor, which is when you have minority holders in a class
25 that's voted overwhelmingly to accept the plan they're bound

1 by what the class decides unless they can show that two of
2 the foundational protections for minority stakeholders have
3 been violated. Either there is unequal treatment among the
4 unitholder class, which there is not, or the unitholders
5 would do better in a Chapter 7 case which they won't, Your
6 Honor.

7 So, once those two bedrock aspects of the entire
8 process of the statutory architecture have been satisfied
9 we're left with the class votes and it binds the minority to
10 the settlement. That is precisely what happened in this
11 case, Your Honor.

12 So, in sum, Your Honor, the debtors are very
13 pleased to present the plan before the court. It's the end
14 product of a lot of work that achieves a negotiated outcome
15 that's fully consistent with the code. It's been
16 overwhelmingly accepted by the classes which we think negates
17 almost every issue that Mr. Sarachek has raised.

18 To the extent the issues are evidentiary issues we
19 think the testimony that the court has before it in the
20 declarations and heard live today amply satisfies the
21 debtors' burden on these issues, Your Honor. We'd ask that
22 the court confirm the plan.

23 So, I'm happy to answer any questions the court
24 has.

25 THE COURT: No. Thank you very much.

1 MR. HOLT: Thank you, Your Honor.

2 THE COURT: I'll hear from the unsecured creditors
3 committee if they wish to be heard.

4 MR. PACHULSKI: Was that a rhetorical question.

5 (Laughter)

6 MR. PACHULSKI: Judge Carey knew exactly what to
7 ask.

8 (Laughter)

9 MR. PACHULSKI: Your Honor, again, Richard
10 Pachulski of Pachulski Stang Ziehl & Jones on behalf of the
11 unsecured creditors committee.

12 Your Honor, I think we're two of a small group
13 that were here from the beginning of this case and I want to
14 explain how the committee got to where it did which I
15 personally am very proud of.

16 As Your Honor knows, right about the time of the
17 trustee hearing or just before that we were dealing with
18 whether the District Court was going to take this away in
19 Florida, which the unsecured creditors committee was
20 vehemently opposed to and ultimately had a trustee fight that
21 we hoped that the SEC would support, which they did.

22 In that success we came to January 23rd of this
23 year and this is what we achieved. The professionals were
24 all gone for the debtor, effectively, other than Young
25 Conaway, but the lead counsel were gone. The financial

1 advisors were gone. We had no board and we had two new
2 committees. Not a very pretty picture at the time, but one
3 that the unsecured creditors committee felt was in the very
4 best interest of this estate. Based on what where we sit
5 today we're proud that we ended up in that position.

6 We had a committee, along with the debtor and the
7 other two ad hoc committees, that felt very strongly that
8 because of the 10,000 or so investors that we had to do this
9 quickly. So, we had to deal with two very, very specific
10 general issues. One, get a deal done; and as stated by
11 counsel, Mr. Sabin had very strong views as to what should
12 happen with the unitholders just as Mr. Kortanek had with the
13 noteholders and we did with the unsecured creditors
14 committee, but that would only get us to the stage of a deal.
15 That doesn't mean we'll get to confirmation.

16 So, the committee wanted to feel very comfortable
17 that we would end up coming to confirmation with a deal
18 because we could make it and not meet the requirements that
19 counsel has just gone through for the debtor. So, where we
20 wanted to be particularly comfortable was on the Ponzi scheme
21 issue, which we've heard a lot about today, the substantive
22 consolidation issue and the intercompany issues because while
23 we can talk about some of the other issues that have been
24 raised by Mr. Sarachek, if we couldn't get comfortable with
25 that then we were going to have to go in a different

1 direction. We may to do a plan that related to over 300
2 debtors. We didn't think that was in the best interest, but
3 we were going to do what was mandated by the bankruptcy code.

4 So, aside from meeting on March 8th and,
5 effectively, having moot court competition between Mr. Sabin,
6 myself, Mr. Tuchin and Mr. Kortanek we then had to have two
7 days of meetings with all of the committee's business people.
8 During that time Mr. Sharp and Mr. Chin presented their
9 analysis which, frankly, was done in 60-days. As Mr. Tuchin
10 said, they were absolutely drinking from a fire hose. The
11 unsecured creditors committee was vehement about getting it
12 done.

13 We were getting some pushback from the debtors
14 saying this is fundamentally unfair, we just showed up, it's
15 now beginning of February, mid-February and he wanted a deal
16 by March 23rd. That, frankly, was not just mandated by the
17 committee in general, but the *de facto* chairman of the
18 committee, which I'll get to in a moment, Mr. Myrick
19 (phonetic), was insistent that we make that deal, that we get
20 something done and we make sure that we can confirm a plan.

21 So, we met and Mr. Sharp went through his Ponzi
22 scheme analysis or, more significantly, the economics. And
23 what did he explain; that \$425 million dollars had been
24 raised for investors that just went to pay other investors.
25 The clearest indicia of a Ponzi scheme that 80 million went

1 out to brokers, that approximately 30 million went out to the
2 benefit of Mr. Shapiro, and his family and his related
3 entities. He didn't rely on the Kapila report to come to
4 that or Ms. Davis's testimony that took place during the
5 trustee hearing. DSI had done their own analysis and came to
6 that conclusion.

7 There was no doubt in our mind that for purposes
8 of a settlement that a Ponzi scheme had occurred in this
9 case. Now, that doesn't mean that there weren't assets.
10 I've been involved in many Ponzi scheme cases where there are
11 assets; that's the whole point. If you can't demonstrate any
12 assets odds are pretty low that you're going to get money
13 from investors, but if you can show people the Owlwood
14 estate, which is one of the premier estates in the world,
15 you'll get more money even though your money may not have
16 gone into Owlwood and you were told it would in some
17 respects. In that case it was a loan, it was not intended to
18 be a purchase. So, we felt comfortable in the Ponzi scheme
19 issue.

20 Then we got to the substantive consolidation
21 issue. In the substantive consolidation issue Mr. Sharp,
22 again, giving a presentation just as he did in his
23 declaration, stated that money, effectively, all got
24 comingled in a single account. He states that in Paragraph
25 13 of his declaration and that that money went where it was

1 needed as Mr. Shapiro saw fit. It could go to buy wine, it
2 could go to invest in property, it could go to pay investors
3 if the money hadn't somehow gone out from the fund, but it
4 all went into a single fund and if that weren't enough, as he
5 states in Paragraph 17 of his declaration, the books and
6 records were in shambles and there was no documentation of
7 any of the transactions. You could never unscramble the
8 eggs.

9 So, we made the determination that when it came to
10 the consolidation issue, the substantive consolidation issue,
11 that there was no doubt in our mind -- and I assure, Your
12 Honor, this was discussed in incredible detail at the March
13 8th meeting that we knew we had to deal with Owens Corning.
14 So, when we showed up on March 22nd and 23rd we wanted to
15 make absolutely sure that if we were going to make a deal
16 that we were going to be comfortable with the substantive
17 consolidation issue.

18 Because of Mr. Sharp's presentation during those
19 two days it also became clear that the purported liens
20 between the funds and the Propco's and MezCo's were
21 fraudulent conveyances; that not to get at Mr. Sarachek's
22 clients or to other purported secured creditors, but they
23 were absolute constructive and actual fraudulent conveyances
24 which is why we brought the complaint. So, it doesn't matter
25 at the end of the day whether Mr. Sarachek wins his appeal or

1 not. He will not win. I give the odds exactly what counsel
2 for the debtor gave which is about zero, but even if he wins
3 he can't get around the fact that these were absolute actual
4 and/or constructive fraudulent conveyances. So, it was on
5 those bases that we made the deal. That we were comfortable,
6 but not just the deal was made, but that a deal could be
7 confirmed.

8 The most important thing that we see here today,
9 Your Honor, and I think that counsel has also stated it, it's
10 not just what has been proven, but because the burden of
11 proof has been met at some point Mr. Sarachek has to present
12 some evidence counter and there's nothing counter; nothing on
13 the Ponzi scheme, nothing on substantive consolidation,
14 nothing on the settlement. And you would think that there
15 would have been, at least, a deposition, there would have
16 been some discovery to try to refute it, but there is none.
17 The fact is he could have done all that and we would have
18 ended up exactly where we are today confirming a plan that
19 deals with those specific issues.

20 Here is the last part, Your Honor, this is the
21 best possible plan after the time that has gone in this case
22 with people working extremely hard. This is the best we can
23 do. It is not just the best we can do, it is actually an
24 excellent plan in light of the fact that we believe, and
25 we'll see how it turns out, that noteholders in a Ponzi

1 scheme, unsecured creditors in a Ponzi scheme may receive 70
2 cents on the dollar. Some cases may be better, but we're
3 going to have to hear homerun on some litigation, for
4 instance.

5 Mr. Sharp and I were involved in a case, another
6 large Ponzi scheme, at the end of the day I think it was in
7 the neighborhood of five to ten cents. So, what's unusual?
8 What's the alternative; the alternative is that the plan
9 won't be confirmed, we will spend tens and tens of millions
10 of dollars. People who have already been harmed will be
11 greatly harmed in the future as compared to liquidating these
12 assets and paying people as soon as possible.

13 On a final note, Your Honor, and this is
14 particularly important to me, this case -- all cases I take
15 personally. This case I take more personally because not
16 just the 10,000 investors, Your Honor, but we had a committee
17 member, Mr. Myrick, who made this, who drove this deal on
18 March 23rd who died four days later. Whether he knew it or
19 not, because it was a heart attack, he was instrumental in
20 this deal being made. And at the end of the day this plan
21 should be confirmed because of people like him and the other
22 10,000 investors as compared to fighting and at the end of
23 the day doing much worse.

24 Now, I would like to answer your question, Your
25 Honor, on the liquidity facility which is at the end of the

1 day with all the work that was done by lots of people. This
2 was a very complicated facility because, effectively, you
3 needed to be licensed in 50 states. The parties who had
4 agreed to do the transaction were not comfortable, among
5 other things, with all of the licensing requirements.

6 So, at the end of the day the SEC, among other
7 things and unrelated to the liquidity facility, wanted this
8 entity, the ultimate entities to be able to be traded and if
9 people want they'll be able to trade-out. We think we will
10 do well and we hope that people don't sell at a discount, but
11 there will now be a mechanism post-confirmation after the
12 entities are formed that if people want to trade out of their
13 positions they can.

14 So, we're disappointed the liquidity facility
15 didn't work, but to be honest, Your Honor, it was pulled at
16 the last minute. We were surprised, but there were a lot of
17 things that happened in this case that we were surprised
18 about. So, with that, Your Honor, the official creditors
19 committee it is in deep support of this plan and we would ask
20 that Your Honor confirm it.

21 We thank you for everything you have done to get
22 us in this position today.

23 THE COURT: Thank you.

24 I'll hear from the ad hoc committees.

25 MR. KORTANEK: Thank you, Your Honor; Steve

1 Kortanek of Drinker Biddle for the ad hoc noteholder group.

2 Your Honor, this is late in the day, but I did
3 want to introduce Mr. Jay Bainan (ph) who's in court today.
4 He's the co-chair of the noteholder group and is in court for
5 confirmation. Mr. Bainan will be the noteholder group's
6 designee on the supervisory board post-effective date.

7 The noteholder group fully and emphatically
8 supports confirmation of the plan today, Your Honor, and we
9 echo the comments made by Mr. Pachulski, and Mr. Tuchin and
10 as well as, I suspect, what Mr. Sabin will say. The plan is
11 the product of an immense amount of work by the debtors, each
12 of the three committees, all of their professionals and in
13 particular, as Mr. Pachulski noted, our clients, members of
14 the three committees and members of the debtors' board and
15 management have worked exceptionally hard to get us here
16 today.

17 Like Mr. Pachulski's comments, the noteholder
18 group firmly believes that this plan represents the best
19 possible outcome under these difficult circumstances for
20 investor victims generally and especially noteholder victims.

21 This global settlement or the global settlement at
22 the core of this plan is truly an outstanding accomplishment
23 given the issues that were presented by the parties,
24 negotiated in a very short timeframe and, indeed, as Mr.
25 Tuchin pointed out, involving several major issues as to

1 which there simply was not binding precedent. So, we echo
2 the view that if these issues weren't settled we would,
3 indeed, have faced many months, perhaps years of litigation
4 and appeals; all of which would have delayed and deluded
5 victim recoveries in these cases. It was just unacceptable
6 as a proposition.

7 So, if the plan is not confirmed today,
8 unfortunately, that's the prospect that might very well face
9 investor victims. We also fully agree with Mr. Tuchin's
10 remarks in terms of the amount of creditor engagement in this
11 process specifically having three committees representing
12 different constituencies in the cases.

13 This was an unusual situation, as Your Honor may
14 recall, where we raised, we started off as our firm had
15 represented an unofficial ad hoc group. Serious
16 representation issues early in the cases about the same time
17 as the trustee motion was being litigated and we're very
18 grateful that our motion to seek appointment of an official
19 noteholder representative body was settled. As part of that
20 trustee motion settlement created the official noteholder
21 committee or noteholder group as well as Mr. Sabin's client
22 the unitholder group.

23 That set the stage for a good process and good
24 processes get good outcomes. That is, we think, a major
25 reason why the March settlement process and term sheet was

1 able to happen on such a short basis. We resolved the
2 specific constituency representation issues. That allowed
3 proper engagement, proper advocacy of a great many issue.
4 Noteholders uniformly came to this case when they first
5 learned of the Ponzi fraud and the filing of the bankruptcy
6 case with a great many concerns and issues.

7 Really, I think, at the top of the list for all
8 noteholders was I was promised liens, what about my liens.
9 So, addressing those issues, and those beliefs and what most
10 of the loan documents say in a verifiable, and with a good
11 process and with good fiduciary representing it which has
12 been what our client's main mission has been was essential, I
13 think, to get us to the point where we had this immense
14 acceptance rate among noteholders.

15 So, we start from all these individual victims
16 believing I had liens, I should be able to fall on my real
17 estate, and follow those proceeds through. We did our best
18 while the settlement was, you know, in process to maintain
19 adequate protection of those lien assertions, I'll call them,
20 throughout the cases. So, we did those things to protect
21 noteholders claims as best we could under the circumstances,
22 but we believe and our clients strongly believe that
23 noteholders should feel very confident.

24 The settlement here reflects the best arguments
25 that we could put forward on those lien issues. We have

1 many, many theories to deal with those more so then have been
2 raised in the current plan objection and we think all those
3 issues have been fully and fairly resolved in economic terms
4 and what the plan settlement embodies.

5 Your Honor, I think that with those comments we,
6 again, reiterate our support for confirmation of the plan.
7 We think it's a phenomenal outcome and confirmation will
8 allow distributions to begin by year-end which will be very
9 important. Noteholders had, as with unitholders, many of
10 them had relied on getting interest payments on a regular
11 basis. So, the urgency of distributions to creditors is
12 extremely high and it's been something that all of the estate
13 parties have committed to.

14 Thank you, Your Honor. That's all we have.

15 THE COURT: Thank you.

16 I'll hear from the unitholders.

17 MR. SABIN: Good morning, Your Honor; Jeff Sabin
18 for the ad hoc group of unitholders.

19 First and foremost, in the courtroom I'd like to
20 introduce again, I know you've met him at least once, but I'm
21 going to introduce the two members of our committee; Dr.
22 Raymond Blackburn who will also be our representative on the
23 supervisory board if this case is confirmed and goes
24 effective, and next to him Dr. Chris Pinney.

25 Your Honor, pardon me for a reference to what was

1 a jingle at one time for a cigarette, but we've come a long
2 way, baby, if you have and in a short period of time. And
3 maybe more aptly, if one goes to the movies these days and
4 remembers a particular landing on the moon, I view March as
5 one giant step and I view today, hopefully, as the great
6 leap.

7 First and foremost, I join in the debtors'
8 memorandum of law supporting confirmation and seeking
9 confirmation, and in the oral presentation so ably done by
10 Mr. Holt. I join in the comments of Mr. Pachulski and, yes,
11 in all of them, and in the comments of my colleague Mr.
12 Kortanek.

13 The work that was done February and March was
14 extraordinary. Not only was it a sharing of diligence in a
15 very short period of time, thank you to Mr. Sharp, and Mr.
16 Chin and their teams, but in addition it was extraordinary
17 lawyering both from position papers, to responses, to
18 position papers, to mediation sessions and then even after we
19 got to deal with the issues of treatment and subcon the most
20 important thing which is keeping in all of our, front of our
21 brains if you will, the need for speed. By that I mean
22 recognizing that the investors who are hurt here many of them
23 are retirees, many of them had spent their last dollar being
24 defrauded by this Ponzi scheme and many of them were in need
25 of some immediate cash.

1 I think what we've come up with, independent of
2 the treatment, and the subcon, and the settlement themselves
3 inside the plan, is a structure, as Mr. Pachulski referred
4 to, that says if they're still in need and didn't avail
5 themselves of the facility that never came about we soon hope
6 that post-effective date, assuming confirmation, that the A-
7 certificates will be tradeable and we hope they're not
8 tradeable at a deep discount, but they will be tradeable.
9 I'm sure people will be looking at a significant asset base
10 that will be in the hands of a wind-down entity.

11 Now, Mr. Sarachek is here and has availed himself
12 at the eleventh hour of trying to, otherwise, upset and
13 challenge various provisions. I submit that he's had his day
14 in court for quite a while and has not availed himself of all
15 the other things that he could have done to stop this train
16 that, otherwise, is a proper train that investors got on,
17 that committees got on, that the debtors got on. That train
18 has voted and that train has said, look, you had your day in
19 court, it was an opinion issue. You have appealed, you never
20 asked for a stay. Number two, you, otherwise, never
21 challenged classification.

22 So, let's remember of these 306 some odd debtors
23 that there really are two classifications. One is the seven
24 fund debtors. And you have heard that term referred to.
25 Those are the debtors that, otherwise, solicited or, at

1 least, arguably solicited the funds from investors. Six of
2 them are the ones who, otherwise, received those funds and
3 immediately comingled it. You have heard the testimony and
4 you've read the declaration of Mr. Sharp and of Mr. Kapila.
5 Those are the ones, okay, that are fund debtors; that's all
6 they have other than their intercompany claims and/or
7 intercompany liens against property owning debtors or Mezco
8 debtors. Mezco debtors I refer to as the ones who own the
9 equity in the PropCo debtors.

10 The claims that were filed and the objection that
11 was filed treats Mr. Sarachek's clients and the plan itself
12 only as creditors of the fund debtors, not of PropCo debtors,
13 not of Mezco debtors. In fact, there's never been an
14 assertion anywhere in any document I've seen of a mortgage,
15 properly filed or not, against any of the properties
16 themselves.

17 So, when Mr. Pachulski says, gee, let's remember
18 in this case the Cybergenetics motion that the committee
19 brought which articulated that which was summarized by Mr.
20 Pachulski which says, look, your assertion and your client's
21 assertion read in its best light is that somehow your clients
22 have perfected lien rights in these intercompany claims and
23 intercompany liens of the fund debtors against Propco and/or
24 Mezco. In particular, his lawsuit, the adversary proceeding
25 with respect to Owlwood, was just one aspect arguing

1 different theories to get to that conclusion.

2 You may remember that that lawsuit was brought and
3 also then pending was the committee's Cybergenetics motion
4 and that we put off for another day anything to do with that
5 motion for a while, then it was granted, and then we said,
6 well, committee if you want you can actually commence your
7 adversary, but let's stay that adversary until we get to
8 confirmation. We, otherwise, are now here.

9 There is no need for any further delay. There is
10 no need for that lawsuit to ever go forward because,
11 effectively, the investors have said we understand, we
12 understand what our professionals and our fiduciary groups
13 did. We understand it and we do it in the right way which is
14 with our vote. We understand it by percentages that are
15 north of 95 percent in each of the classes. That vote, okay,
16 as Mr. Holt so ably argued, was not just for the plan it's
17 for the settlements in the plan.

18 So, as you heard also I'm not only in support of
19 confirmation, but in support of the form of confirmation
20 order in which you will make findings with respect to the
21 propriety of the global settlement, with respect to which you
22 will, otherwise, subsume in the confirmation order approval
23 of the separate 9019 motion for the global settlement. Why?
24 It's pretty obvious why, because we don't need any kind of
25 further challenge if this court were to bless confirmation

1 based on equitable mootness. The plan is based on, it's a
2 bedrock. Okay. That settlement is the bedrock of this plan.
3 You can't take that settlement out, okay, and unscramble the
4 egg that, otherwise, the plan scrambles, rightfully, says all
5 the voters.

6 In addition, you've heard references from Mr.
7 Sarachek to a request for some reserve. Now, unless I've
8 missed something on the docket he has not filed a Bankruptcy
9 Rule 3020(a) motion. So, it's inappropriate at this point to
10 even raise the request for some kind of reserve regardless of
11 whether there are funds to put in a reserve. And you've
12 heard that the confirmation order itself and when we go
13 effective the liens, the intercompany liens, the intercompany
14 notes will be gone for his clients.

15 So, for all of those reasons, Your Honor, we
16 support and urge you to order confirmation pursuant to the
17 confirmation order and we thank you for, otherwise, herding
18 all the cats and forcing us to get together in a room and,
19 otherwise, spend days trying to get to a very difficult, very
20 arm's length negotiated settlement. And while there's a
21 piece of me that would, otherwise, love to be arguing to the
22 Supreme Court with Mr. Pachulski on my left and Mr. Klee on
23 my right some very interesting issues that are in the
24 position papers I'll save that for another day.

25 Thank you, Your Honor.

1 THE COURT: I'm sure the Supreme Court will be
2 grateful for that.

3 (Laughter)

4 THE COURT: Does the U.S. Trustee wish to be
5 heard?

6 MR. FOX: Good afternoon, Your Honor. I'll be
7 brief. Tim Fox on behalf of the United States Trustee.

8 May I please the court, my office does not object
9 to confirmation of the plan. And consistent with debtors'
10 counsel's comments earlier we raise some informal comments
11 with respect to the plan vis-à-vis and the settlement motion.

12 This is an issue that comes up from time to time
13 in cases. Here the facts are so distinct with respect to the
14 need for settlement that we are very happy to have seen the
15 separate settlement motions filed in connection with the plan
16 here. We think it's important that the debtors satisfy the
17 burden for confirmation under the standards of the bankruptcy
18 code. And based on all the evidence that's been placed into
19 the record we believe the debtors have satisfied that and as
20 I said before have no objection to confirmation of the plan.

21 I think it's a meaningful distinction for
22 confirmation of a plan from the settlement of a number of
23 issues and without the apparatus of the bankruptcy code and
24 the confirmation of a plan I don't think my office would feel
25 comfortable binding every party based solely on a 9019

1 settlement even among fiduciaries. So, we believe that the
2 plan process was integral to the confirmation of the plan and
3 to effectuating the relief that the plan seeks to implement
4 for all of the victim investors as well as the general
5 unsecured creditors of the debtors' estates.

6 As I said, Your Honor, we have no objection to
7 confirmation of the plan and to the terms of the plan
8 settlement, and are happy to receive those in a dual track
9 process.

10 THE COURT: Thank you.

11 MR. FOX: Thank you.

12 THE COURT: Anyone else wish to be heard before I
13 go to Mr. Sarachek?

14 MR. BADDLEY: Good afternoon, Your Honor; David
15 Baddley from the Securities & Exchange Commission. It's nice
16 to be back here in a positive environment such as a plan
17 confirmation hearing.

18 The SEC wholly supports the plan for all the
19 reasons that have been mentioned. Clearly, it resolves very
20 complex and significant issues regarding priority and
21 distribution. The result is that every investor will recover
22 something meaningful here and no one will recover nothing.

23 I also value the balance of the strong business
24 plan with the liquidity. You know, the business plan is
25 designed to maximize the asset values by a control sale

1 process over several years. Normally the cost of that
2 process would be a loss of liquidity while investors waited
3 for those monies to come in, but not in this case because the
4 plan does create a mechanism for the trust to be registered
5 and to provide a public market with pricing transparency for
6 the investors to sell their interest if they choose if that
7 happens. That is a unique and creative feature of this plan
8 which I know we worked very hard with the debtors to help
9 facilitate and, hopefully, that will provide some value and
10 optionality to the investors.

11 Also, I was very pleased to see the high voter
12 participation that Mr. Tuchin pointed out as well as the
13 overwhelming support. Also, obviously, if the plan is
14 confirmed now then there would be a significant reduction in
15 the ongoing administrative expense accrual for the estates.

16 The only comment that we did have was a clarifying
17 provision in the confirmation order which I believe has been
18 added in Paragraph 43, which makes it clear that nothing in
19 the plan's release or exculpation provisions will impair the
20 SEC's investigation or enforcement powers against any of the
21 non-debtors.

22 Since we filed the action against Woodbridge, and
23 Mr. Shapiro and others in December we have filed another
24 action against some of the external agents. Our
25 investigation is still ongoing and our plan is to contribute

1 whatever recoveries from these and other future actions to
2 the liquidation trust so that it can supplement the
3 distributions to the investors.

4 I saw that recently the court did enter the order
5 approving the settlement between the debtors and the SEC,
6 we're grateful for that. Thank you.

7 If the plan is confirmed then we will not be
8 filing a proof of claim. I think our deadline right now is
9 this Friday, but if the plan is not confirmed then we would
10 need to file a proof of claim based on the judgement, not
11 necessarily to receive a distribution of assets, but
12 certainly, at least to preserve rights in order to make sure
13 that whatever the outcome may be is something that is fair to
14 the investors.

15 So, I would like to thank all the professionals.
16 I think you all took on a massive responsibility and
17 performed exceptionally. I know the lead attorneys get a lot
18 of the shout-out, but I know you all have a lot of staff, and
19 support behind you and please pass on our appreciation for
20 everything that you all have done. As well as to thank the
21 court. I know you spent a lot of time early in the case to,
22 you know, give up time for the hearing as well as to provide
23 the parties with a lot of meaningful guidance. That really
24 did get the case on a solid footing which has gotten us to a
25 confirmation hearing in roughly nine months. We're very

1 grateful.

2 Thank you.

3 THE COURT: So, Mr. Baddley, indulge me for a
4 moment. The participation of the SEC here has -- it's not
5 only welcomed, it's been extremely positive. But be honest
6 with me, you didn't really want to be here, initially, did
7 you?

8 (Laughter)

9 MR. BADDLEY: Well, I could normally say I'm not
10 authorized to make a position on this, but if this is me
11 speaking, you know, I do have a bankruptcy background. And I
12 do think that there is a value to this process and especially
13 in a case like this. And I don't have a crystal ball to say
14 what would have happened in a receivership or not.

15 But I cannot imagine a result that would have been
16 any better than this in the time that it happened. Because,
17 as I said early when there was pending committee motions,
18 these constituents did need representation and they got it
19 and I think that's why we're here. So, we're very pleased
20 with the outcome of the case.

21 THE COURT: Well thank you for your participation.

22 (Laughter)

23 THE COURT: Would anyone else like to be heard?

24 Mr. Saracheck, you're up.

25 MR. SARACHEK: Not easy to follow all this

1 kumbaya.

2 Your Honor, and I'll be brief, what drives me is
3 Lisa de le Rochelle, an 85-year old lawyer who invested in
4 Owlwood. What drives me is Betty Lou who invested in
5 Owlwood, a California resident. What drives me is Jan
6 Castaneda, a lawyer from California who did an enormous
7 amount of due diligence here and, obviously, was defrauded.
8 Is it a Ponzi scheme? I don't know.

9 But that's what drives me, Judge. That those
10 parties all -- they are fairly sophisticated parties who did
11 due diligence here prior to entering into this investment and
12 do believe they're secured.

13 A lot has been made of the fact that, oh, he
14 didn't do discovery, this, that the other thing. Well, along
15 the way since February, we've taken all the appropriate steps
16 with respect to each property sale to reserve our rights with
17 respect to the proceeds as provided by the Bankruptcy Code.
18 And we filed various objections, most of them, obviously,
19 (indiscernible) obviously, have been denied.

20 But the issue, the one issue that I'm having
21 trouble with is the Gulfco case. And that case basically
22 says that you can't extinguish existing liens between various
23 entities through a plan. And it requires an adversary
24 proceeding. Now, we started one adversary proceeding, but
25 there are many. If there any valid liens here which,

1 obviously, you know, I believe there are, they can't do what
2 they're doing in their plan.

3 It's nice that they want to do it. But I don't
4 think that under the Gulfco case, they can do it. And the
5 Gulfco case is a case that's not just cited in the bankruptcy
6 world. In virtually every corporate borrowing opinion letter
7 from, you know, law firms, from Sullivan to Kirbath (ph) to
8 whoever. I see that case cited over and over again. And I
9 don't know how that gets reconciled here. I don't. I don't
10 have an answer for you. I don't think it's the way the
11 debtor is proposing to do it.

12 Thank you, Judge, for your time. I'll let our
13 papers stand for themselves. Thank you.

14 THE COURT: Thank you.

15 All right, under the circumstances this is a
16 decision when I render it either has to be by a very detailed
17 bench decision or by writing, so I'm not going to decide from
18 the bench today. But I will promise, which I long ago
19 stopped doing because it never worked in my favor, but I will
20 promise a decision within days, not weeks.

21 But as long as you're here, I think what I'd like
22 you to do is to walk me through the proposed confirmation
23 order just to flush out to see whether either the court or
24 others have any issues with where it now stands.

25 MR. TUCHIN: Thank you, Your Honor. And there was

1 one change made to the form of order that was submitted last
2 week. Actually, ministerial changes. We added in some
3 docket numbers and then one other change at the request of
4 the SEC.

5 We had indicated that the Ponzi scheme was
6 discovered in December 2017 and the SEC requested that we
7 change that to say the Ponzi scheme was discovered no later
8 than December 2017. Certainly, an acceptable change to us.

9 THE COURT: All right.

10 MR. TUCHIN: May I approach with that redline and
11 the form of order?

12 THE COURT: Yes, you may.

13 MR. TUCHIN: Thank you.

14 THE COURT: All right, well I see the changes that
15 have been made. Let me ask for the record, does anyone have
16 any comments with respect to any of the provisions of the
17 proposed order?

18 (No verbal response)

19 THE COURT: I hear no response.

20 Is there anything else that we need to talk about
21 today?

22 MR. TUCHIN: May I just have one minute, Your
23 Honor?

24 THE COURT: Yes, you may. Yes, it would be a good
25 idea to give the SEC a little extension on their time.

1 MR. TUCHIN: Exactly. So, Your Honor, we have
2 agreed that we will extend the SEC's bar date until two
3 business days following the court's ruling on confirmation.

4 THE COURT: Very well.

5 Anything else we need to talk about?

6 MR. TUCHIN: No, thank you, Your Honor.

7 THE COURT: All right, thank you, all, very much.
8 I appreciate all of the submissions and arguments and
9 presentations made. That concludes this hearing. Court will
10 stand in recess.

11 MR. TUCHIN: Thank you, Your Honor.

12 MR. SARACHEK: Thank you, Your Honor.

13 (Proceedings conclude at 12:18 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski
Mary Zajaczkowski, CET**D-531

October 24, 2018